UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 19-30088
	) Chapter 11
PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC COMPANY	)
	) San Francisco, California
	) Wednesday, January 29, 2020
Debtors.	) 10:00 AM
_____	)
	STATUS CONFERENCE RE: CONFIRMATION
	SECURITIES LEAD PLAINTIFF'S MOTION TO APPLY BANKRUPTCY RULE 7023 TO CLASS PROOF OF CLAIM [5042]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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PG&E Corp., Pacific Gas and Electric Company

SAN FRANCISCO, CALIFORNIA, WEDNESDAY, JANUARY 29, 2020,

10:00 AM

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(Call to order of the Court.)

THE COURT: Good morning, everyone.

IN UNISON: Good morning, Your Honor.

THE COURT: Please be seated.

THE CLERK: The PG&E Corporation.

THE COURT: Mr. Karotkin, good morning. If you're okay, I'm going to take the Rule 7023 motion and then deal with the Chapter 11 status matter. Is that okay with you?

MR. KAROTKIN: Yes, sir, whatever --

THE COURT: Anything else on your agenda for this morning?

MR. KAROTKIN: I don't believe so.

THE COURT: Okay. All right, well, let's proceed. I gave you the docket text on the Rule 7023 motion, so who's got the watch? Who's got the duty?

Good morning.

MR. ETKIN: Good morning, Your Honor. Michael Etkin, Lowenstein Sandler, on behalf of the Public Employees Retirement System of New Mexico.

THE COURT: All right. Mr. Etkin.

MR. ETKIN: If I can just take a moment to introduce my colleagues who are --

THE COURT: Sure.

MR. ETKIN: -- here today.

THE COURT: Please.

MR. ETKIN: My partner, Andrew Behlmann --

THE COURT: Good morning.

MR. ETKIN: -- Randy Michelson, our --

THE COURT: I know Ms. Michelson.

MR. ETKIN: -- California counsel.

MS. MICHAELSON: Good morning, Your Honor.

MR. ETKIN: And from the Labaton law firm, which is lead counsel in the underlying class action, we have Carol Villegas --

THE COURT: Good morning.

MR. ETKIN: -- Nicole Zeiss --

UNIDENTIFIED SPEAKER: Good morning, Your Honor.

MR. ETKIN: -- and Jeff Dubbin.

THE COURT: Thank you for coming to court.

MR. DUBBIN: Good morning, Your Honor.

THE COURT: You all have seats? There's a couple seats on the side if you -- folks coming in late or --

MR. ETKIN: We'll try to squeeze in --

THE COURT: Okay, so --

MR. ETKIN: -- somewhere, Your Honor.

THE COURT: -- you've got my docket order about timing?

MR. ETKIN: I do. And --

THE COURT: Okay.

MR. ETKIN: -- again, preliminarily, Your Honor, my colleague, Mr. Behlmann, and I are going to split the argument, and Mr. Behlmann's going to handle the notice issue and I'll handle everything else. We've talked about trying to reserve ten minutes --

THE COURT: Okay.

MR. ETKIN: -- for rebuttal, but --

THE COURT: Well, my --

MR. ETKIN: -- lawyers and timing is always aspirational, Your Honor.

THE COURT: You know, we're running parallel with the United States Senate this morning at this exact moment, but I don't have the rigid timetable that the chief justice does.

MR. ETKIN: That's --

THE COURT: But I do have a couple of preliminary questions, so -- again, I don't think you've been here before, but I'm a notorious questioner.

MR. ETKIN: Oh, no, I've --

THE COURT: Can you imagine presiding over fifty senators and they can't talk?

MR. ETKIN: I had a tough-enough time representing a group of lawyers who couldn't agree whether it was day or night, so --

THE COURT: My question is rather obvious, I think. You made the point in your papers and in response, particularly to the TCC: this is not about the nondebtor defendants; your claims here that you're asserting and talking about are only against the corporate debtors. And I guess -- does it really matter whether they are derivative or direct? Either way, 510(b) disposes of them in a sense; isn't that right?

MR. ETKIN: Well, I think, as long as those are claims in connection with the purchase or sale of a security, --

THE COURT: But isn't that what this is --

MR. ETKIN: -- 510(b) disposes of it. And that's what our claims are.

THE COURT: Well, that's right. So --

MR. ETKIN: So we have conceded that 510(b) --

THE COURT: Right, but what I'm getting at --

MR. ETKIN: -- applies to our claims.

THE COURT: -- is I went and read in the papers your dispute that I think is a nondispute for today's purposes, about claims against the nondebtor officers and directors. Whether those are direct or directive is for another day or another court; it's not relevant to today.

MR. ETKIN: Absolutely correct, Your Honor. I think that's --

THE COURT: And so do I care or do you care whether the members of the class that you want to represent actively

here assert derivative claims or direct claims against the corporate debtors? Does it matter?

MR. ETKIN: Well, it only matters to the extent that, if we're asserting derivative claims, that brings into play another issue that's not before the Court.

THE COURT: Right.

MR. ETKIN: The other point is that, if they were derivative claims against the debtor, that means the debtor would own the claims against itself. So by --

THE COURT: Well, I understand, but isn't that the nature of all derivative claims?

MR. ETKIN: Correct, Your Honor --

THE COURT: Yeah.

MR. ETKIN: -- but these are -- the claims asserted against the debtor in the proofs of claim are securities-fraud claims. But for purposes of today, I don't know that it matters. But certainly we dispute the fact that our claims against the debtors are derivative claims as well.

THE COURT: It seems to me angels on a pin, unless I'm missing something, because you acknowledge that the 510(b) operates and therefore the fire survivors are not impacted by this. The only people that are impacted, I guess, on an adverse outcome, not on today's motion but on the merits, are the equity holders.

MR. ETKIN: That's correct, Your Honor --

THE COURT: Okay. Okay. I mean, without --

MR. ETKIN: -- because that's where our claims fall.

THE COURT: -- without getting into the nuances of what kind of equity holders and securities -- I mean equity versus debt, I don't care about that today.

So here's my next question: A lot is spent -- a lot of time is spent on the debtors' side, about the notice and the class -- the class notice and the supplemental notices. If an individual -- let's say Mr. A -- Mr. A held equity in the parent company all the way through the record date and the petition date and was therefore given notice. Isn't that person going to be -- that Individual A, isn't he affected by the consequences if he hasn't filed a timely claim?

In other words -- let me state it more specifically. Do you speak here today on behalf of every single person who might have been defrauded in the four years that we're talking about, or only those who didn't have the proper notice and therefore could have, or either did or didn't, file proofs of claim? That's what I -- because that's what I'm a little unclear on. And --

MR. ETKIN: I understand the question.

THE COURT: And that gets to proof of claim or proof of interest, because proofs of interest didn't have to be filed. And the notice says you don't have to file a proof of interest but, if you have a claim, you have to -- you have to

do so.

MR. ETKIN: Correct. Well, that begs the question of whether a particular current holder or a holder on the record date understood that distinction and even knew that they had a claim.

THE COURT: Well, Mr. A on my hypothetical got the notice anyway. Whether he knew what to do about it we'll leave for another day.

MR. ETKIN: Correct.

THE COURT: My question is do you speak for Mr. A today?

MR. ETKIN: We speak for all putative class members, Your Honor, whether they're current holders or not.

THE COURT: And whether they got actual notice or not?

MR. ETKIN: And whether they got actual notice or not.

THE COURT: Okay, the next question --

MR. ETKIN: Mr. Behlmann'll get into that issue in a little more detail --

THE COURT: Okay, well, all right.

MR. ETKIN: -- but --

THE COURT: And the last question on that subject is what do we do if this gets to the class situation and A has filed a claim? What happens in a class-action matter of this nature in the bankruptcy court when a member of the class filed a claim? Because, obviously --

MR. ETKIN: What --

THE COURT: -- unless -- I didn't go look at the claims docket.

MR. ETKIN: Right.

THE COURT: Maybe you did. But I suspect some people did.

MR. ETKIN: We didn't look at the claims docket, nor does anybody indicate how many of those types of claims were actually filed, if any, other than our client.

But here's what happens: If the class is ultimately certified --

THE COURT: Right.

MR. ETKIN: -- and there's a claim that is either resolved by settlement or litigation, class members, under Rule 23 incorporated into Rule 7023, have the option to opt out if they want.

THE COURT: Well, as they do in all class -- most class actions.

MR. ETKIN: Correct.

THE COURT: But most class actions aren't in bankruptcy with claims bar dates.

MR. ETKIN: That's correct. So if somebody did file, how that's been handled in -- I've been involved in a lot of these over the years, and how it's been handled in the past is the individual claim is deemed duplicative of the class claim,

and the distribution process with respect to a classwide distribution, to the extent there's anything to distribute at the end of the day, would take precedence over that, unless that individual decided to opt out of the class and pursue its own claim. Frankly, from the standpoint of reality, Your Honor, that would be highly unlikely.

THE COURT: Okay. And I realize that I'm a little bit ahead of myself, too. You're here today to tell me that I should permit the class claim and, if I answer that question in the affirmative, then at some other day we'll deal with the more traditional Rule 23 matters. But --

MR. ETKIN: As well as the merits.

THE COURT: But they stay in this court, right?

MR. ETKIN: They stay in this court, Your Honor.

THE COURT: Because it's a proof-of-claim issue.

MR. ETKIN: That's --

THE COURT: Okay.

MR. ETKIN: That's exactly right. I mean, in all candor, and based upon some of the things Your Honor has done already in this case, it may make more practical sense to have one court deal with the class-certification issue. But again, all of that is for another day.

THE COURT: You know, I'm going to get a reputation among the district judges if I keep trying to shift stuff off on them.

MR. ETKIN: No -- I think it's just the practical approach --

THE COURT: Okay.

MR. ETKIN: -- that Your Honor takes.

THE COURT: Those are my preliminary questions. So why don't you go ahead and use the time as you wish on your argument. I have read the briefs. I am familiar with the issues. But you're up.

MR. ETKIN: Okay. Thank you, Your Honor. Your Honor, what the parties do agree about is that there are three primary factors considered by the courts that have addressed the threshold question of whether to apply Rule 7023 --

THE COURT: Right.

MR. ETKIN: -- to a timely-filed class proof of claim, whether the class was certified pre-petition, the propriety of the notice provided to the class members, and the impact on the administration of the estate.

THE COURT: You can save some of your remaining time. I got issue 1. I mean, it's --

MR. ETKIN: Right.

THE COURT: If in my discretion there should have been something done that were done and my discretion is to say that's not a fatal flaw by it not having happened, there's nothing else to talk about.

MR. ETKIN: I didn't intend to go into the pre-

petition class-cert issue too much; I think that's covered by the papers.

I think the debtors and the TCC adhere to an overly rigid analysis, Your Honor, of these factors, without consideration of the facts and circumstances here. Frankly, Your Honor, the arguments advanced by the TCC and the debtors would effectively neutralize the very purpose of Rule 7023 that is obviously in the books for a reason.

While the debtors appear to analyze these factors somewhat in a vacuum along with the TCC, they ignore the admonition in the case law, including the Musicland case, which is cited often by both the debtors and the TCC, that the weight of each of these three factors must be determined on a case-by-case basis, that no one factor is dispositive, and any factor may become more or less important, depending on the facts of the case. And we submit, Your Honor, that whether this class was certified pre-petition or not is a nonfactor, especially since the operative complaint was filed post-petition in the district court. And that was pursuant to a stipulation with the debtors and others, that was so-ordered by this Court, in terms of the timing of the filing of the third --

THE COURT: Okay, actually I realize that --

MR. ETKIN: -- amended complaint.

THE COURT: -- there was another question that's maybe not related exactly. And if you want to pass it to Mr.

Behlmann, you can. But forgive me for forgetting one of my hypotheticals. We talked about Mr. A who might file a claim. Now I want to talk about Mr. B, Mr. B who did not get anything. Mr. B sold his -- bought his stock in 2016, sold it in 2018, and never got on anybody's service list. If I deny the motion today, is Mr. B out of luck?

MR. ETKIN: Correct.

THE COURT: Completely?

MR. ETKIN: Well, unless this Court adopts the reasoning of the MF Global case and the Connaught case in New York, where those courts took the position that the American Pipe -- the Supreme Court case, American Pipe -- the tolling that exists in class actions, where individual claims are tolled for statute-of-limitations purposes, if the class is not certified --

THE COURT: Well, but I'm not -- but not even not certified. If the motion to file the claim is denied --

MR. ETKIN: That's correct.

THE COURT: -- and again, assuming it's not appealed, Mr. B is out of luck, I guess, unless, as a matter of due process, his claim would pass through. 1141 says confirmation and discharge is everything, but the case law has said due process still means something.

MR. ETKIN: That's correct, Your Honor.

THE COURT: So --

MR. ETKIN: That's correct.

THE COURT: -- what happens to Mr. B in my hypothetical if he never got --

MR. ETKIN: Well, there are two --

THE COURT: -- notice of anything?

MR. ETKIN: Likely he is -- as well as thousands of others, would be out of luck. The exception is, number one, if there was a ruling that -- like in those cases I mentioned, that American Pipe applies and you need to give these absent class members, where certification was not ordered by this Court, an opportunity to come in and file their own claim again --

THE COURT: Okay.

MR. ETKIN: -- or if that individual class member decided to come in and say that the discharge is not applicable because they never got notice -- constitutionally appropriate notice of the bar date.

THE COURT: Well, that might invite a new class action on behalf of everybody who didn't get any notice at all, which is sort of a subset of what you're here for today. I mean, aren't you --

MR. ETKIN: Yeah, I think about -- I think about that, Your Honor, and, frankly, my head comes closer to exploding. I don't know what would happen or what could happen down the road.

THE COURT: Well, but this case is unlike the cases where notice is never given because there's no way the person could have even known that a claim existed. This is not like the abuse cases or the latent toxic-tort cases. This is -- the allegations are that something was misstated during a four-year period before bankruptcy, and the facts are, as alleged, some people bought securities during that period, and some stayed on and still held them, and some got rid of them. And the question is, in that second category -- we're back to the point that I'm struggling with and what happens to those people.

MR. ETKIN: I think they're potentially disenfranchised, Your Honor --

THE COURT: Okay.

MR. ETKIN: -- if they don't have an opportunity for representation through the class-claim process.

Your Honor, the debtors and the TCC seem to also believe that the timing of the filing of the 7023 motion here and the fact that lead plaintiff did not object to the bar-date motion are fatal to the application of Rule 7023. And again, when the facts and context are taken into consideration, as well as the relevant case law set forth in our motion and the reply, those arguments don't impact the necessary conclusion that the class mechanism embodied in the Bankruptcy Rules is appropriate and essentially, really -- and the Court just touched upon it -- to preserve the opportunity for thousands of

defrauded investors to have their claims against the debtor resolved on the merits.

THE COURT: Well, aren't we back to my poor Mr. B? Mr. B doesn't even know that there's a hearing on whether there's going to be a bar date, so I can hardly say he should have come and objected to the bar date, if he didn't know about the thing in the first place.

MR. ETKIN: We're back to your poor Mr. B.

THE COURT: Right?

MR. ETKIN: That's correct, Your Honor.

THE COURT: Okay.

MR. ETKIN: And in our papers there's an indication -- and Mr. Behlmann'll touch on it as well -- as to the amount of shares that traded in the nine-month period between the end of the class period set forth in the class-action complaint and the class proof of claim, and the record date, which was utilized for purposes of determining holders. Billions of shares were traded. So --

THE COURT: No; I understand.

MR. ETKIN: -- the idea that notifying holders notified the entire class of purchasers during the class period is just, frankly, an absurd notion.

Your Honor, I'd like to talk briefly about the timing of the Rule 7023 motion, to the extent the Court believes that filing less than two months after the bar date was not undue

delay. It's really a function, Your Honor, of whether granting the relief requested will negatively impact the administration of this case. And we maintain, it clearly won't here.

This is not Musicland or its progeny, the Fedra (ph.) case in the Southern District, where a disclosure statement was approved, votes on the plan were being or had been solicited. And indeed, in Musicland the confirmation hearing had already started. Nor has the prospect of a class claim by defrauded investors come out of the woodwork. The debtors were very much on top of it by filing the adversary proceeding that they filed two weeks after the petition date.

There are no compelling circumstances here mandating denial of the motion based upon the timing of its filing. The class claim itself was timely filed. The debtors were defendants in the securities litigation pre-petition. The securities-litigation claims, Your Honor, are even classified in every iteration of the plan that's been filed before this Court; yes, as 510(b) subordinated claims, a classification that we don't dispute. And the treatment afforded those claims as subordinated claims appear (sic) in the waterfall anticipated by at least the currently filed plan.

THE COURT: Well, not -- I mean, 510(b), AB 1054, the whole dynamic, leaves no choice. I mean, as I say, there's no way, as I see it, that your constituents can do anything other than be in that position, no better than their fellow

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securities claimants.

MR. ETKIN: That is -- that's absolutely correct, Your Honor.

THE COURT: Okay.

MR. ETKIN: And frankly, in ninety-nine percent of the cases --

THE COURT: It's --

MR. ETKIN: -- equity is out of the money altogether.

THE COURT: I know.

MR. ETKIN: So I wouldn't be standing up and talking to you about this. It would be irrelevant.

THE COURT: You wouldn't even be here.

MR. ETKIN: Well, I might be here on the 105 injunction, and I might be here on the plan, but I certainly wouldn't be here on this.

The debtors concede, really, that there's much more work to be done in advance of confirmation. And even Musicland states that delay, assuming it even exists here, does not automatically disqualify a class proof of claim.

THE COURT: Well, hold on. Again, if I were to grant your motion, is there any reason why we have to do anything in any kind of a fast track for the next phase of the Rule 23 matter? Would seem to me, all these other things that are driven by AB 1054 and the need to take care of the survivors, and all the obvious things -- it would seem to me your folks

could easily be back-of-the-line for priority purposes, in terms of dealing with --

MR. ETKIN: Well, we are back-of-the-line for --

THE COURT: Well, I know, but I mean --

MR. ETKIN: -- priority purposes.

THE COURT: -- in terms of -- in terms of motions and --

MR. ETKIN: Right.

THE COURT: -- determinations. I understand your --

MR. ETKIN: What does that -- being back-of-the-line for priority purposes, what does that translate into, Your Honor?

THE COURT: I meant for scheduling purposes.

MR. ETKIN: It translates into: there's no rush.

THE COURT: Right.

MR. ETKIN: And we make a point that, number one, certification, pure Rule 23 certification, of securities cases is not complicated, to begin with. And number two, to the extent the claim needs to get resolved through litigation, that can easily await confirmation and happen after confirmation of the --

THE COURT: And then --

MR. ETKIN: -- of the plan.

THE COURT: And then whether it's in this court or some other court, there will be a -- if there is no settlement,

it'll be a determination: either recovery or no recovery.

MR. ETKIN: That's right.

THE COURT: I mean, plaintiffs do lose class actions sometimes; right?

MR. ETKIN: It does happen.

THE COURT: Okay.

MR. ETKIN: It does happen. In fact, there's what we talked about during the argument on the 105 injunction. The motions to dismiss have been fully briefed, and oral argument is scheduled for February 6th.

THE COURT: Well, I understand, but those are different. I mean, do you think, if Judge Davila grants those motions to dismiss, that moots the case here?

MR. ETKIN: I think that it will have an impact on the --

THE COURT: It might affect people's motivation, but --

MR. ETKIN: I think it will have an impact.

THE COURT: Okay.

MR. ETKIN: I'm not going to conjecture on the actual impact, but --

THE COURT: You don't need to.

MR. ETKIN: -- it will certainly have an impact.

In fact, Your Honor, granting this threshold motion with respect to the application of Rule 7023, from our

perspective, is not only appropriate and necessary; it also can provide an impetus for discussions. I mean, the debtor has managed to talk to most of the constituency. We're not claiming our constituency is more significant or less significant, but I think the debtor has made that determination, and that's fine.

But there is the possibility -- and even Mr. Tsekerides, during the course of oral argument on the 105 motion, mentioned several times that securities cases --

THE COURT: I know.

MR. ETKIN: -- ultimately are either (sic) mediated --

THE COURT: I know they do.

MR. ETKIN: -- and settled.

THE COURT: And we might be able to accommodate them too.

Anyway, you want to reserve some time for Mr. --

MR. ETKIN: I do, Your Honor. I just want to go over a couple more things.

THE COURT: Okay.

MR. ETKIN: I don't know how much time I have left.

THE COURT: He's your colleague. Well, you're cutting into --

MR. ETKIN: He's my -- and I don't want him to scream at me.

But one thing about impact on the estate, Your Honor,

and the Musicland -- the impact on the administration of the estate and the Musicland case, which I think is important, is, when you dive into Musicland a little bit, you understand what was at stake. The class action there was in connection with claims that would be either priority or administrative claims. The Musicland plan, which was up for confirmation, and confirmation had actually started, had a cap on administrative and priority claims.

So allowing 7023 at that very late stage of the case would have put feasibility --

THE COURT: Right. Right.

MR. ETKIN: -- of that plan --

THE COURT: No. I understand.

MR. ETKIN: -- into question. So that's gumming up the works, Your Honor; this isn't, as we've discussed.

THE COURT: Well, I might use that phrase, though. It's a good phrase to hang onto --

MR. ETKIN: I know. I know. And --

THE COURT: -- "gumming up the works".

MR. ETKIN: And that's what Judge Bernstein said. And interestingly enough, in his -- in Judge Bernstein's Connaught opinion, which was decided several years later, he actually utilized the American Pipe holding for the proposition that, if a class wasn't certified in that case, individual class members should still have the opportunity to file claims because of the

tolling in a class-action context. Certification -- granting of this motion will deal with that issue. And it was elegantly dealt with by Judge Glenn in MF Global, and it's an elegant solution to the prospect of having to re-notice or deal with all of that. That's basically what the class-action mechanism is all about.

Your Honor, we talked about, in our papers, the fundamental distinctions between the Alonzo motion, which the Court --

THE COURT: Yeah, I --

MR. ETKIN: -- denied for a tentative.

THE COURT: You don't have to explain that. I know the --

MR. ETKIN: And I'm not going to --

THE COURT: I mean --

MR. ETKIN: -- get into that.

THE COURT: If the other side wants to convince me that I should stick -- be consistent, they can do so. But I find the factual predicate in Alonzo --

MR. ETKIN: And --

THE COURT: -- are (sic) quite different.

MR. ETKIN: -- I'm not going to get into TCC's separate argument about whether the claims against the directors and officers are derivative or direct claims.

THE COURT: They don't need to. I mean --

MR. ETKIN: That's for another day. And to the extent we feel we have to deal with that in the few minutes of rebuttal we have, that's fine.

THE COURT: Okay.

MR. ETKIN: So I'm getting back -- so getting back to the fundamental question we ask in our reply, which is, is the class-claim mechanism superior to the proof-of-claim process with respect to this class -- putative class of defrauded investors under the circumstances of these Chapter 11 cases, I think the answer is yes.

Your Honor, it should be noted that class members, during the class period -- if you look at the average price of PG&E stock during the class period, which we did in Bloomberg, the average price was fifty-five dollars per share. So at the end of the day, there was a loss. Whether on the merits the class claims are sustained in this court or in the district court is another question. But they paid, on the average, fifty-five dollars a share. They need an opportunity to be able to vet those claims, despite the fact that they're subordinated claims and the recovery at this point is unknown.

THE COURT: Okay.

MR. ETKIN: And with that, I'll yield to Mr. Behlmann.

THE COURT: Thank you, Mr. Etkin.

MR. ETKIN: Thank you.

THE COURT: Well, I think you have five to ten

minutes. I mean, again, I'm not going to be precise on the time, but --

MR. BEHLMANN: Understood. Thank you, Your Honor.

THE COURT: Yeah.

MR. BEHLMANN: And I will endeavor to keep my remarks brief, and --

THE COURT: Okay, Mr. Behlmann.

MR. BEHLMANN: -- I will speak quickly but not so quickly that the court reporter cannot understand.

THE COURT: It's all done electronically. The court reporter is a computer.

MR. BEHLMANN: Your Honor, you and the --

THE COURT: If she got -- if that one doesn't understand you, I can't help you.

MR. BEHLMANN: Well, either way, I'll speak as quickly and clearly as possible, Your Honor.

Your Honor, you and Mr. Etkin had some colloquy about Mr. A and Mr. B and what notice that Mr. A and Mr. B may have gotten or not gotten. I think it might be helpful to talk about what notice Mr. A and Mr. B were actually entitled to get. There's a fair amount of ink spilled in all of the parties' papers on this issue, but I think it would be helpful to crystallize some of that as we're here today. So the --

THE COURT: Well, in my hypothetical, Mr. A got a notice -- there's no question about that, right -- because, in

my hypothetical, A is still on board as an equity holder.

MR. BEHLMANN: Understood.

THE COURT: And he happened to receive it and he knew about it. But we'll talk about what notice Mr. B in particular, as an absent class member, who's truly absent, not a holder, was actually entitled to get, because --

THE COURT: Again, so we're --

MR. BEHLMANN: -- I think --

THE COURT: -- so we're on the same page, I regard Mr. B as somebody who bought his shares during the window and sold them. Whether he bought public debt or public equity is not relevant. He bought them in 2016, sold them in 2018, and was off on a Hawaiian cruise when he learned of the bankruptcy in January of 2019. Okay?

MR. BEHLMANN: A true absent class member, Your Honor.

THE COURT: Okay. Okay.

MR. BEHLMANN: With respect to Mr. B, the operative question is, was Mr. B a, quote, "known creditor" of the debtors? Was he a party that they reasonably should have been able to identify and provide actual notice of the bar date to? If the answer to that is yes, then there's two things that we know to be true and that I don't think the parties necessarily dispute would be true; one is that Mr. B would be entitled, as a matter of constitutional due process, to actual notice of the bar date. If he was a known creditor under the rubric

established in pretty much every case to address the issue since Mullane, he was entitled to actual notice.

The debtors admit, in their papers and in the various certifications, they did not provide actual notice to the Mr. Bs of the world. They try to rely on publication notice and assert that that was good enough. We'll talk about why that wasn't good enough, in a little bit.

The debtors go to pretty great lengths to describe the actual notice they did provide. They did provide notice to lots of other people.

THE COURT: Yeah.

MR. BEHLMANN: I think there's talk of six-and-a-half million mailed notices. The problem is, most of those 6.2 million, as we see in the Schrag declaration, were mailed to customers. Little under a quarter million went to fire claimants, scheduled creditors, vendors, and subrogation claimants. A hundred and eleven thousand went to the Mr. As of the world: the current holders of the debtors' equity securities as of one specific point in time: the record date of July 1st. But nowhere in that list do we see purchasers of the debtors' securities during the class period. The Mr. Bs of the world are just sort of left as though they're not -- they're not known, they couldn't be known, they're not entitled to actual notice, in the debtors' view.

THE COURT: Well, they -- again, let's break down to

simple terms.

MR. BEHLMANN: Sure.

THE COURT: And let's pretend Mr. B is an equity holder. I guess corporate entities should know who, at some point in the past, was a shareholder. Maybe he doesn't know when that person is no longer a shareholder.

MR. BEHLMANN: That is --

THE COURT: Right?

MR. BEHLMANN: That is absolutely correct and absolutely --

THE COURT: Okay.

MR. BEHLMANN: -- our position, Your Honor. And I'll explain why in about thirty seconds.

The second thing that's true, if they were known creditors, if it was possible for the debtors, as Your Honor just asked, to identify those folks, was publication notice in any quantity good as to them? If the debtors, instead of essentially dropping leaflets on the entire Northern California -- if they had blanketed the country in publication notice, would that ever be good enough? As a matter of law, the answer is no, that's never good enough. And we'll talk about why in a moment.

The touchstone for determining whether these folks -- whether the Mr. Bs of the world were known creditors is whether they were reasonably ascertainable; could the debtors have done

something to reach them, and is that "something" reasonable. Yes. There are customary procedures that are used in every securities class action. So in any securities class-action case in the country --

THE COURT: You've established a basis for it.

MR. BEHLMANN: Yep. -- there is a set of procedures that are used. And parties, lead plaintiffs in those cases, for instance, when there are settlements -- if a settlement contains a bar order or some other provision that's going to bind people, before district courts can bind those people, they send out notice.

THE COURT: Well, are you suggesting that the people who are making the decisions on how to send out the bar-date notice should have known what these established securities procedures were, because of the pendency of the action in the district court? I mean, it wasn't something like -- nothing was pending here.

MR. BEHLMANN: Well, that's part of it, Your Honor.

THE COURT: Right? So, I mean, where would they go to look to see the "good book" that says how we're supposed to do it in this case?

MR. BEHLMANN: That's a perfect question, Your Honor, and a wonderful segue. There are firms that specialize in that. The debtors happened to use one of those firms --

THE COURT: Right.

MR. BEHLMANN: -- in this case: Heffler.

THE COURT: Yeah.

MR. BEHLMANN: Heffler specializes in sending notice to securities class members. There's another firm. We submitted the Walter declaration.

THE COURT: No, no, but I understand that.

MR. BEHLMANN: Yeah.

THE COURT: I read those papers.

MR. BEHLMANN: Sure.

THE COURT: But what about -- this actual case was a bankruptcy and there was, of course, a pending district-court action. Are you saying that Heffler and the company's decision-makers should have put that together, said, because this action is pending against the officers and directors and, I guess, originally the company, they should have followed, in bankruptcy-notice rules, the procedures that might have been applied if there never had been a bankruptcy?

In other words, I think -- to state it differently, what you're telling me is all this authority for, and precedent for, what happens outside of bankruptcy. But this is inside a bankruptcy. So what were the bankruptcy people supposed to do to know -- to import the U.S. District Court federal securities class-action procedures?

MR. BEHLMANN: It's like you're reading ahead in my notes, Your Honor.

The answer is yes. I'm saying that they should have known that they should have used those procedures, because they were aware the class action existed. They took steps at the very outset of the case. As Mr. Etkin noted, two weeks into the bankruptcy, the debtors filed an adversary proceeding seeking to put the entire securities class action on hold against all of the other defendants. So they knew that they were out there; they knew --

THE COURT: Well, but remember --

MR. BEHLMANN: -- the claims were out there.

THE COURT: -- they were trying to get a stay for those people who weren't automatically protected by the stay.

MR. BEHLMANN: Understood, but the --

THE COURT: So --

MR. BEHLMANN: -- the debtors were defendants in that case. The debtors were defendants in the securities class action at that time.

THE COURT: And I guess nominally still are, but still protected by the stay.

MR. BEHLMANN: Correct. So there is no way for the debtors to stand before Your Honor and say, "Your Honor, we had no idea these people had claims."

THE COURT: Well, I'll try it a different way. Is there any guidance in the authorities or the literature or the expertise in the class-action world, of importing procedures to

use in class actions at a time when the very defendant is protected by the stay? In other words, what -- if I go to the "good book" on how to serve properly in securities litigation, is there a subsection on "this applies even when you're protected by the automatic stay"?

MR. BEHLMANN: It is rare, Your Honor, and I will tell you why it's rare. It's rare for the exact reason Mr. Etkin mentioned a little while ago, which is, typically a securities-fraud claimant has a claim that's subordinated under Section 510(b) with respect to their claim against the debtor.

THE COURT: Correct.

MR. BEHLMANN: Typically, equity, in the average Chapter 11 case of a publicly traded company, is anticipated to be out of the money. So debtors do not typically serve, in a case where equity is anticipated to be out of the money, and usually well out of the money, bar-date notices on those folks.

THE COURT: Right.

MR. BEHLMANN: But here, from the --

THE COURT: I agree. I mean --

MR. BEHLMANN: -- from the --

THE COURT: -- I've done it on little cases, but public companies that are insolvent from day one.

MR. BEHLMANN: Sure. And from the outset of this case, it was clear to presumably everybody in the room that equity was very likely to be in the money, which means the

debtors knew, or at least should have known -- and presumably they did know, because they classified and treated the 510(b) claims in the plan --

THE COURT: Well, I don't think you can start to fault what was being done earlier in the case and what shows up in a plan later. I mean, they didn't file a plan on the petition date that showed we had a 10(b) (sic) --

MR. BEHLMANN: No, but at the -- fair point. But from the very outset of the case, the stock was still trading --

THE COURT: Well, that --

MR. BEHLMANN: -- in the double digits.

THE COURT: I agree with you. I mean, look, we had discussions from the very outset, and the premise, to this day, has been solvency. Everything's been premised on that, and hopefully it's still a legitimate premise.

MR. BEHLMANN: Sure. So to build on that, Your Honor, from our standpoint, the debtors knew that there were claims out there that had been asserted against them. These weren't just inchoate hypothetical claims. These were claims that had been asserted against the debtors in a complaint -- actually, in several complaints filed in the district court.

So the debtors knew the claims existed. They knew the scope of the class period that was asserted against them. All they had to do was take the exact same procedures they used, to give notice of the bar date to current holders as of the July 1

record date and apply those procedures to the class period. That is the procedure that is used and that their consultant Heffler actually touts on their website, as we mentioned in our reply brief; hey, this is how we do it. They talk about cases where they gave notice to tens, or even hundreds of thousands, of prospective class members, under these exact same circumstances; not in bankruptcy, but publicly traded shareholders that had to be given actual notice of something. In those cases, I believe they were settlements in the class action. But here it's -- from a due-process standpoint, the reality is no different.

THE COURT: Do you have any other cases that are equivalent to this one, public debtor, class action, bankruptcy, solvency, a given? Do we have a counterpart in other bankruptcies that --

MR. BEHLMANN: Very few that I can recall, Your Honor. And frankly, in the few that I've dealt with, we've actually reached a consensual resolution of this issue and allowed class claims on a stipulated basis --

THE COURT: Well --

MR. BEHLMANN: -- after a motion like this.

THE COURT: Maybe that'll happen here; right?

MR. BEHLMANN: Which may happen here.

THE COURT: But -- no, but I'm not making light of the problem on both sides. But I'm going back to what could

somebody on the other side have done to go to the book, to go to the -- where do I look to see what's been done in other clearly solvent public companies in bankruptcy, with a class action pending against officers and directors down the street?

MR. BEHLMANN: There's --

THE COURT: I don't remember if we had a class action in the bankruptcy -- well, PG&E number I. Maybe we did. I don't remember.

MR. BEHLMANN: And frankly, Your Honor, there's not a lot of precedent on that, for the reason --

THE COURT: Okay.

MR. BEHLMANN: -- I mentioned before. But that doesn't mean that the procedures don't exist. That doesn't mean that the debtors, in conjunction with their advisors who specialize in giving actual notice to members of securities class actions -- that they're simply excused from their obligation to provide due-process notice. Those due-process obligations still exist.

The debtors attempt to explain away in their papers, well, we may not have had any guarantee that the nominees would have forwarded the notices on. But they didn't have that guarantee with respect to the current holders. They gave them notice anyway. The --

THE COURT: Well, we're back to Mullane, "reasonable under the circumstances"; right? Your point is --

MR. BEHLMANN: Sure.

THE COURT: -- it's not -- they didn't pass that reasonable-minimum test that, given -- had they done what you think Heffler could have done, maybe that would be different. Right?

MR. BEHLMANN: Yeah. Absolutely. I mean --

THE COURT: And maybe Mr. B would be out of luck because he was on the cruise in the South Seas and didn't get whatever attempt to give him notice that could have been done.

MR. BEHLMANN: Absolutely. And frankly --

THE COURT: Okay.

MR. BEHLMANN: -- they didn't do anything with respect to the Mr. Bs of the world. Either -- we could stand here and speculate as to why that is, whether they didn't think about the Mr. Bs, they didn't -- they just didn't follow the procedure from every other publicly traded case that's out -- where equity is out of the money. I don't know why they did it. But the reality is, as we stand here today, there are tens, or even hundreds of thousands, of class members that didn't receive notice of the bar date that we assert they were entitled to, because there was a reasonable procedure that the debtors even refer to as ordinary and customary --

THE COURT: Okay.

MR. BEHLMANN: -- for reaching out and getting mail in the hands of these folks.

THE COURT: Do you want to -- again, I told you I'm not going to hold you exactly to the time, but I want to let you reserve some time also with your colleagues. So unless there's something really critical, maybe we'd be better off letting you come back in final. Is that all right, or do you want to make --

MR. BEHLMANN: That's all right. I could spend --

THE COURT: I mean, I --

MR. BEHLMANN: -- thirty seconds --

THE COURT: -- I promise you, I've read the briefs. Okay, go ahead and do a --

MR. BEHLMANN: There's one point I wanted to spend thirty seconds highlighting, Your Honor, and then I will --

THE COURT: Okay.

MR. BEHLMANN: -- I will step down and cede the podium to the debtors, and that is, the point that I made at the very outset of this discussion, which is that publication notice was not good enough. The Ninth Circuit has referred to actual notice as a, quote, "minimum constitutional precondition to a proceeding which will ... affect the liberty or property interests of" a creditor in bankruptcy.

The Ninth Circuit has also held that the burden is on the debtor to cause actual notice to be given to known creditors. And if they don't, even if that known creditor has notice of the reorganization proceedings -- so somebody

actually learns about PG&E's bankruptcy, they happen to see one of the publication notices the debtors targeted at fire victims -- that person -- the onus is not on him to run into the bankruptcy case and file --

THE COURT: So somebody who lives --

MR. BEHLMANN: -- a proof of claim.

THE COURT: -- in San Francisco or, better yet, lives in Santa Rosa or in Paradise, if they weren't -- if they didn't get the notice as an equity holder -- or former equity holder, the fact that they knew of the bankruptcy -- well, that's a bad example, I mean, because of the attempts to let the people from Paradise and the other fire areas know the extent of notice. But somebody who is even local, if that person wasn't served with the actual notice, the notion that everybody in Northern California knows that PG&E's in bankruptcy is not enough.

MR. BEHLMANN: Correct.

THE COURT: Okay.

MR. BEHLMANN: From a constitutional due-process standpoint, that's not good enough, Your Honor.

THE COURT: Okay.

MR. BEHLMANN: Thank you.

THE COURT: Okay. So we'll reserve ten minutes for your side.

Mr. Slack, right? Are you going to make the argument?

MR. SLACK: Yes, I am, Your Honor.

THE COURT: Are you going to share that with someone on the other side, with TCC? Do you have a sharing arrangement with --

MR. SLACK: Yes. Mr. Richardson is going to --

THE COURT: Okay.

MR. SLACK: -- is going to argue for the TCC, and --

THE COURT: Okay.

MR. SLACK: -- we're going to split it thirty and ten, Your Honor.

THE COURT: Thank you. Good morning, Mr. Slack.

MR. SLACK: Good morning, Your Honor. Richard Slack for the debtors.

And I'd like to accept your invitation to start with the Alonzo case --

THE COURT: Okay.

MR. SLACK: -- and tell you why there's no daylight between the situation here and in Alonzo.

So, Your Honor, in Alonzo, plaintiff there was a terminated employee who sought to bring a proof of claim on behalf of a class of former employees, from June of 2016 forward. Like here, Alonzo did not have a class certified pre-petition and, indeed, his pre-petition certification was theoretically impossible under the same terms that the plaintiffs suggest, because his complaint was not filed until shortly before or just after the petition date.

The 7023 motion was made in October. That's two months before the movants here filed. And the debtors in that case had served notice on employees prior to the petition date, back to January 1, 2017, meaning that there was a six-month period in the Alonzo matter, Your Honor, where the debtors relied on constructive notice. And as you recall, Mr. Alonzo, made the exact same argument in his papers that the PERA movants do here, is that his class did not get -- entirely get actual notice.

Now, the movants don't deal with Alonzo at all until the last paragraph on the last page. And they only make one argument as to why they say it's different, in that paragraph. And they say it's different because -- they say that the debtors admitted that every absent class member got actual notice.

THE COURT: Well --

MR. SLACK: And they cite to our papers when they make (sic) that. And they say -- here, reading from their papers, "The facts are to the contrary, and the debtors" -- this is our papers, what we say -- "the debtors sent a claims package to every current employee, including Mr. Alonzo. In addition, the debtors sent the claims package to every former employee, not just the subset of former employees who might be members of the putative class", and they have ellipsis, ellipsis, ellipsis.

And if you look at what they take out, Your Honor, it

changes the entire meaning, because what it says, that they ellipsis out, is -- and reading it fully, it says, "not just a subset of former employees who might be members of the putative class, but every single one whose termination date occurred between January 1, 2017 and January 28, 2019." And the next paragraph goes on to say that therefore six months' of people in the class did not get actual notice and were relying on constructive notice in order to satisfy the Musicland factor. So --

THE COURT: Does the fact that -- well, first of all, you'll recall that there never was a ruling on the merits, see. Mr. Alonzo accepted a tentative ruling, and the tentative ruling, in part, was based upon that he himself had a post-petition claim. So he was out of the money to begin with, from my point of view. But also, even if Mr. Alonzo had asserted a claim, it wouldn't have been 510(b)-related. Does that make a difference or not?

MR. SLACK: No, it doesn't make a difference for the Musicland factors, in the sense that, if anything, Your Honor, not having a 510(b) claim there is irrelevant here because it's a 510(b) claim. And as we'll get to when we talk about the administration of the estate, this Court is going to have to decide -- if you certify this class, it's going to have to decide in some way or another what the value is, because we have equity holders who are --

THE COURT: No, I --

MR. SLACK: -- both taking equity as part of the financing, as well as they're voting. And they're going to need to know how much they're diluted by a huge class seeking literally billions of dollars in damages, even if it is reduced on a 510(b) level.

So the fact here --

THE COURT: Well, it's not reduced. It's subordinated.

MR. SLACK: Well, subordinated.

THE COURT: But it's subordinated --

MR. SLACK: But it's subordinated to equity, so it'll be pari passu with the equity --

THE COURT: It'll be pari passu with --

MR. SLACK: -- and you'll have to know --

THE COURT: Okay.

MR. SLACK: -- you'll have to know in terms of what that dilution factor is and how --

THE COURT: No, I fully understand there is a dilution factor.

MR. SLACK: And the point is, Your Honor, you're going to have to deal with that in the next five months --

THE COURT: Well --

MR. SLACK: -- if you certify this class.

THE COURT: Well --

MR. SLACK: So what we would say, Your Honor, though, is that whether Alonzo was a tentative, what Your Honor said in the tentative, and we agree with it a hundred percent, is the persuasive arguments of debtors re: robust noticing, absence of pre-petition class certification, and lateness in filing the motion well after the bar-date notice, alone, justify denial. We agree with that then. We agree with that now.

THE COURT: Well, just looking at it from my point of view here, is there not a difference between somebody who very recently was an employee and someone who years ago was a shareholder or bondholder? You think --

MR. SLACK: Well --

THE COURT: You think there's no difference there?

MR. SLACK: The difference cuts the other way from what the PERA-motion plaintiffs would like you to believe, because, if anything, those employees -- you could have theoretically gone into the company records and --

THE COURT: Right.

MR. SLACK: In the situation of the securities plaintiffs, the whole idea there is that the debtor, in its books and records, doesn't have the names of the beneficial owners.

THE COURT: Correct.

MR. SLACK: Here's what it has: --

THE COURT: Correct.

MR. SLACK: -- it has the record holders, which were served, and those don't change very much, and then nominees are like the banks of the world --

THE COURT: No, I know. I know how that --

MR. SLACK: -- and then you have --

THE COURT: I know how that works.

MR. SLACK: -- the beneficial owners.

THE COURT: And nobody can guarantee in absolute certainty that, through the nominee, through the third -- the intermediate levels, the person will actually get notice. That gets back to reasonable likelihood of making it. But to me it's a whole different ballgame to think about somebody that six months earlier was an employee of the company.

MR. SLACK: Well, again, I would tell Your Honor that it actually cuts --

THE COURT: I mean, they weren't --

MR. RICHARDSON: -- it actually --

THE COURT: -- they weren't nominee employees.

MR. SLACK: It actually cuts against the PERA plaintiffs here --

THE COURT: Okay.

MR. SLACK: -- because the idea and the question -- and it's the heart of it -- is whether the beneficial owners are known. And if you look at the Chemetron case, which is the case they cite and we cite, what it says is you predominantly

look at what information is in the debtors' books and records. Okay? And in the debtors' books and records, we do not have the nominees, and -- I'm sorry, we have the nominees; we do not have -- and we don't have a full list of the nominees, but what we --

THE COURT: No, but you know who the major players in the world are. For nominees --

MR. SLACK: And we sent -- and we --

THE COURT: -- the --

MR. SLACK: And we sent out -- and it's in Ms. Pullo's declaration, that we sent notice to all of the record holders and all the nominees.

So the only issue, Your Honor, is whether the absent class members are known to the debtors. And what I would suggest, Your Honor, is that, if you look at their own declaration, I think that Mr. Walter's declaration, in paragraph 9 -- he starts talking about how, in order for the debtors to get the information, we should come to you as part of the bar-date order and get an order telling the nominees to tell us who these people are. To the extent somebody has to go and get an order to get the information, it's pretty clear that these people are not known to the debtors. And --

THE COURT: But isn't that standard procedure in the world -- in the financial world of people owning through street accounts?

MR. SLACK: And --

THE COURT: I mean, if I have ten shares of ABC company at Charles Schwab as the broker in town, that's my nominee. I'm not hiding money. I'm just buying ten shares through Schwab. And if you want to serve me constructively, you at least have to notify Schwab, right?

MR. SLACK: So that is exactly right, Your Honor. You said something which I want to -- I want to put in headlights. That notice that we would give you as a nominee -- as a beneficial holder beyond the nominees, is itself constructive notice. It is a form, as you said, of constructive notice, because we send out the information to the nominees and then it gets distributed. So all we're really talking about is another form of constructive notice.

THE COURT: Well, you send a notice to Charles Schwab and it says, if you have any clients that own stock in XYZ, please -- or maybe you don't say "please" --

MR. SLACK: Yep.

THE COURT: -- forward these on. And so all of us -- anybody in this room who own stock through that way maybe get something now and then from your stockbroker that --

MR. SLACK: Right.

THE COURT: -- you got some notice or something. So --

MR. SLACK: And the issue, Your Honor --

THE COURT: Right?

MR. SLACK: -- is whether that is -- whether those holders are known, not whether there's a mechanism at some point that'll get to most of them maybe. The point is whether they're known.

And you asked a great question, and let me give you the direct answer. You asked are there any cases that address this in the securities context in bankruptcy.

THE COURT: Right.

MR. SLACK: And the answer is yes. And the answer is they go against the PERA plaintiffs.

So if you look at the GAC case that we cite in our papers, and you look at pages 16 to 17, the Eleventh Circuit dealt with this specifically and says that you do not need to give actual notice to absent securities holders. And it said that, under those circumstances -- it says the court concluded, under the circumstances of the case, the publication notice was reasonably calculated to apprise nonholding debenture purchasers of the necessary (sic) to file -- of the necessity to file individual proofs of claim, and the notice thus complied with the requirements of due process.

The other case that the PERA plaintiffs site is not to the contrary, and that's the Amdura case. And what's interesting about Amdura, Your Honor, is there you had a class pre-certified. And so what the court there said, since there

was a pre-certified class, to the extent that the plaintiffs had information, the debtors should get it from the plaintiffs. And then it says something interesting in that case: everybody else can get constructive notice. Everybody else. So the one case that they rely on also says constructive notice is okay to get to absent shareholders.

So there are two cases, Your Honor, that deal with this issue in the bankruptcy context, and both go against PERA.

Now, Your Honor --

THE COURT: So you say Mr. B was on his cruise; he's out of luck because there was an attempt through the constructive-notice process, through his brokerage account, or wherever, to give him notice. Mr. A got notice and he has a right to file a claim, or not?

MR. SLACK: So I think, Your Honor, that Mr. A has notice and can file a claim. Mr. B also had notice, constructive notice.

THE COURT: Well, yeah.

MR. SLACK: We all know, Your Honor --

THE COURT: I mean, that's what you're saying: constructive --

MR. SLACK: -- that in bankruptcy, there are people who get constructive notice. And even though we have here a program of constructive notice that went far beyond -- and nationwide, far beyond --

THE COURT: Well, I know you do but, again, the argument on the other side is that you're dealing with the fires and the aspect of the fire, and there isn't -- it's a different extent of notice. But there're difference of opinions about that.

What's your take on the question of -- in my going back to my A and B, if I deny today's motion, B is out of luck; right?

MR. SLACK: So I would say two things, Your Honor. Number one, you say "out of luck".

THE COURT: Well --

MR. SLACK: B could do two different things at this point: One, B could make a motion, that he specifically could say, "I was on a cruise for three months, and I shouldn't be expected to see constructive notice," even though the cruise probably had The Wall Street Journal and People and New York Times and everything else that he needs, because people get the internet now. Used to be, I think, thirty years ago --

THE COURT: Well, he's sailing his own boat, that is, and he doesn't have internet access.

MR. SLACK: So, Your Honor, if somebody says, "Look, I was on a" -- "I was on an African safari for three months," maybe the debtor's not going to object to that proof of claim coming in. But the fact is that constructive notice is constitutionally sufficient.

And let me say one other thing, Your Honor, which is really important for this hearing. And we've talked about this over and over, and I've heard my colleague, Mr. Karotkin, say this to Your Honor, and I think it rings true here. There is no evidence -- evidence -- before Your Honor that there is anybody who did not receive notice, whether actual or constructive. So in front of Your Honor, there is no evidence put on my PERA that anybody actually didn't receive notice here. That is a fundamental flaw of their argument.

Now, a couple of things, Your Honor, that I still want to -- I still want to get to, and I have a little time, luckily.

THE COURT: Well, excuse me. I mean, is it really a flaw procedurally? In other words, if the statement is made that, except the -- in my hypothetical, except people who were on the distribution list and actually got notice, that those people -- since there was no coordinated attempt to send out actual notice through the way we talked about Mr. B, does it make a difference that I don't have a declaration from someone that says, "I was on a cruise and I didn't get notice"? I mean, it seems to me that goes to something later on, but not for today's purposes.

MR. SLACK: Well, I guess I would say, Your Honor, is (sic) you would be throwing out both the test in Musicland if you did that -- because the test in Musicland, when you get to

notice, is important in that Musicland says, right in its test, it's a matter of actual and constructive notice.

So Your Honor can't just say, well, because we didn't send out a piece of paper -- I talked to many people, and we actually had some argument and testimony from the TCC in connection with the bar-date-extension motion, where they said people got actual notice and threw it out. And it's actually seeing it on TV and the publication that actually makes a difference. And that was the argument that was made. So the fact that you get a combination here of actual and constructive notice is actually required and is part of the test that you get in Musicland.

And, Your Honor, let me just say, we talked about the Alonzo case and the precedent, but the position of PERA cannot be reconciled; not just they don't have any cases that address this, but it can't be reconciled with other precedent.

So let me talk about two cases. In the Bally case, the bankruptcy court denied a motion for class treatment, and the decision was appealed. And that's in the Southern District. It's in our paper. So the plaintiffs there were, again, an employment class, where the company had the records of the employees. And the proposed-class period was December 2001 to December 2008, a seven-year period. The notice here was given from 2004 forward. So there were three full years of people who only received constructive notice through

publication.

The district court, Judge Rakoff, affirmed the lower court. And here's what Judge Rakoff said: "[I]t is undisputed that Bally mailed notice of the Bar Date by first-class mail to all current and former employees employed at any time after January 1, 2004. While a much smaller part of the putative class, namely, those ... Bally employees whose employment ended between December 30, 2001 and January ... 2004, received ... notice by publication, this was still legally adequate."

There's the Blockbuster case, Your Honor, also cited in our papers, at 441 B.R. 239. And in Blockbuster, the bankruptcy court held exactly the same as Bally. What happened there was the debtors provided adequate notice to members of the class by publishing notice of the case and the bar date, in three papers: the Dallas Morning News, The New York Times, and The Wall Street Journal.

Your Honor, those cases cannot be reconciled with the position that PERA is taking here.

Now, we've gone through the notice and the robustness of the notice, but what I think is important, Your Honor, is that the constructive notice here -- and if you remember the bar-date motion with --

THE COURT: Of course.

MR. SLACK: -- the TCC objecting, it was not just about what the words on the notice said. The TCC had come

forward with a whole implementation plan to Your Honor. There were (sic) hearing after hearing about it.

THE COURT: No, there was. But --

MR. SLACK: There were -- and the point, Your Honor, and I just want to make it, is that there were changes that were made to make that noticing even more robust in terms of going out to the internet, having impressions. And that's all in our declarations, Your Honor.

So now you have to ask yourself, Your Honor, isn't that the right time -- if there were issues by the representatives here of the securities class, let's measure what happened at the bar date with the other representatives that we had. The TCC represented fire victims. They came forward, as I just said -- we had hearings on the implementation. If --

THE COURT: Yeah, but --

MR. SLACK: -- they thought there were problems --

THE COURT: I mean, we --

MR. SLACK: -- with the implementation --

THE COURT: This case wouldn't be here if it weren't for the fires. And from the very moment this case was filed, the focus has been on what has to be done about the fire victims and notice. And remember what the debtors' original claim form looked like. I mean, we're not talking about just the simple question of the kind of notice that the plaintiffs

here are talking about. We're talking about the fundamental way that the survivors of the fires are going to be treated, broadly.

So I think it's just -- you're pushing on the wrong unopened door, on trying to say it's the same. You may persuade me to deny their motion for the reasons that you've said, but I don't -- I just can't think about all the discussions and all the efforts by survivors, their lawyers, the committees, your side, me, everybody else, on what's the right thing to do to give the proper notice to those --

MR. SLACK: Yeah. Well, let --

THE COURT: -- classes; thousands of people.

MR. SLACK: Understood, Your Honor. And that makes sense. But what I will say is, in a matter where PERA is suggesting that you have discretion -- and you do -- I think it's important to ask the question why weren't these plaintiffs, who were involved in the case -- if you remember --

THE COURT: Well, aren't you --

MR. SLACK: -- back in March --

THE COURT: But you're really blaming the class-action lawyers, that maybe they could have done it. They're blaming your side for not doing the right thing through the brokerage houses. You're blaming them for, well, they should have come up in the middle of a hearing about how to take care of fire survivors, let's take care of investors who had their stock

values go down. They're just not the same. It's just not the same emphasis. And we wouldn't --

MR. SLACK: But if this --

THE COURT: -- we wouldn't be here in this discussion if it weren't for the fires.

MR. SLACK: No, and --

THE COURT: And so --

MR. SLACK: -- look, Your Honor, as I said, it's a discretionary factor. We think you should take that into account.

THE COURT: Okay.

MR. SLACK: I understand that's up to you, whether you do or don't.

But let me get to the last point, which is the administration of the estate, Your Honor. PERA makes no attempt to distinguish, again, your preliminary ruling in Alonzo that Alonzo was too late to make this motion and filed it two months before. And when you look at the standard of Musicland -- and again, we've talked about the standard sum -- what does Musicland say? Musicland says timing is also significant. The most propitious time for filing a motion for class recognition is before a bar date is established, before it's established, since the bar date is effectively uprooted, in part, by the extension of the bar date for a favored class of creditors. And Your Honor recognized that in Alonzo.

And now when you get to this case, let's look at where we are in this case. PERA waited until December 2019 to bring this motion; two months after Alonzo. And the Court itself has recognized, and I don't think I have to go into this that in its January 15th, 2020 order that we got five months; that's it. Five months.

THE COURT: Well, I was just reminding you, but you knew it anyway.

MR. SLACK: Right?

THE COURT: That's right.

MR. SLACK: So Your Honor --

THE COURT: But you --

MR. SLACK: -- let's look --

THE COURT: But you got to persuade me that you're right and they're wrong about there really isn't so much time. Do you really think that before this plan can become effective we have to quantify what should be reserved for this -- the 510(b) parties?

MR. SLACK: So what I think, Your Honor, is that these claims, which again if they get their way they're going to assert that these are -- these claims are worth billions of dollars. So --

THE COURT: Well, I know; they might.

MR. SLACK: When we're talking about equity, we're talking about --

THE COURT: We can also estimate them too.

MR. SLACK: But when you're talking about -- we have two sets of claims, and I want to be clear here too -- you've also got potentially, again, probably less so, but at least hundreds of millions of claims by noteholders all of whom almost certainly, by the way, got notice here, right. But --

THE COURT: Well, we have noteholders and equity holders.

MR. SLACK: Right.

THE COURT: The world is divided into those two categories --

MR. SLACK: Right.

THE COURT: -- that these counsel want to represent.

MR. SLACK: So the point is, Your Honor, is that if you're going to have a dilution factor for the equity, there's two things that are happening, right. There's going to be a vote of the equity -- equity has to vote -- and they're going to need to know what their return is in order to vote on it. And so --

THE COURT: But Mr. Slack we have ways to temporarily allow for voting, and we have ways to estimate allowances for -- this is not a 170 --

MR. SLACK: You're right. So let's --

THE COURT: This is not -- I'm not sending this one to Judge Donato to estimate.

MR. SLACK: Let's take the timing here.

THE COURT: I can estimate it.

MR. SLACK: Let's take the timing here, right.

THE COURT: Okay.

MR. SLACK: So we have five months. What they did here was they didn't bring the second part of the motion, which is really required, and you could deny it on its own, and that is the Rule 23 factors --

THE COURT: I know, but that's -- there's arguments both ways on that.

MR. SLACK: But let's say -- let's assume now we're going to have to go and do that. That's, at least -- and there's typically discovery -- that's at least a month or two. And then, you have to give notice to the class. If you look at all -- the cases that have denied these, like the Bally (ph.) case, they say that okay, here's what you have to do. You have to have a Rule 23 in discovery; that takes a couple of months. Then you have to give notice to the class because here's one of the things, Your Honor, that certainly is potential.

The people who filed proofs of claim, they may not want to share their legal fees with PERA -- the PERA lawyers. They may want every dollar of what they're entitled to, whatever it is, and they may not want to be subject to the legal fees of the class-action lawyers. So you're going to have to give notice to the class.

Then third, Your Honor, we're already out two, three months, minimum. We've now got only a couple of months to figure out whether we're going to value these.

Now, if you're talking about a securities claim, you're going to have to have discovery, you're going to have to have a proceeding of some kind. And again, I think whether it gets addressed in an estimation, whether it gets addressed as part of valuation or feasibility, I think all that needs to be figured out, but what I could tell you what's going to need to be figured out, and just like you said in Alonzo (ph.), it's too late and timing is a huge issue here.

THE COURT: But again, the reason why I don't want to get too hung up on Alonzo is Alonzo was nothing more than a tentative ruling. I never had it vetted in terms of argument. We didn't have this kind of argument. And Mr. Alonzo, I will repeat, was tainted from day one because he had a post-petition claim. So I might not have said that as clearly as I might have a tentative ruling, but it was just plain so. Right?

MR. SLACK: So --

THE COURT: Right? Wasn't that true? Am I remembering it correctly?

MR. SLACK: Your Honor, when you issue a tentative ruling, I pay attention to it.

THE COURT: Well, no, didn't I observe that he had a post-petition claim? So --

MR. SLACK: He did, but --

THE COURT: -- could not be representative of the class.

MR. SLACK: Yes. What you observed though, Your Honor -- and again, we pay attention to what you write -- is that the lack of a pre-petition certification, the constructive and robust notice and the lateness in and of itself justified denial. So we only can go by Your Honor's words, but as I said, what Your Honor wrote was absolutely consistent with the precedent in Bally and Blockbuster and a number of the other cases that we cite in our papers.

THE COURT: Well, I won't tell I went and studied them all, but okay, let's -- well, I want you ask you another question though, I want you to tell me really, do you really believe that granting this motion will jeopardize the time line that we're going to talk about in a little while this morning and that is that five month clock that's ticking?

MR. SLACK: I do.

THE COURT: Because I don't think that's --

MR. SLACK: I --

THE COURT: I'm not convinced that that's necessary, but why is that so? Why is that going to muck it up?

MR. SLACK: Because you're going to have to figure out -- class actions sometimes last two, three years.

THE COURT: Right. I know they do.

MR. SLACK: And the fact is is that you're going to have to figure out prior to the time that people vote on this plan -- so not even the five months -- you're going to have to tell the equity holders what they're getting. You're going to have to tell the people who are funding --

THE COURT: What would -- if there weren't a settlement in the pipeline for next week with the senior bondholder group, what would the disclosure statement have said about what might come out on the make whole dispute or the post-petition interest one? Those are big ticket items with lots of dollars attached.

MR. SLACK: Well, I --

THE COURT: What does the plan going to say about that or the disclosure? Isn't it going to say it might go the other way?

MR. SLACK: Your Honor, I guess what I would say to that is -- is that I would defer to my colleagues who are here, Mr. Karotkin or one of the -- somebody, Mr. Goren.

THE COURT: Okay.

MR. SLACK: But -- and I'm happy to have them get up and talk to that, but what I can tell you is is that this case at this late stage, people are going to want to know if you're funding this and you're getting equity as part of the funding, you are going to want to know whether this claim is worth fifteen billion or nothing or a hundred --

THE COURT: And Mr. Slack what you want me to believe is after all the effort that's putting in by countless people; lawyers and financial people, clients that someone's going to vote down the plan because there might be a dilution of equity? I guess it's hard for me -- that's like saying maybe on appeal the post-petition interest decision would be reversed.

Now, I realize that that may be is a nonissue now because of what's been going on, but I guess I'm just -- I'm not persuaded, but I will invite the lawyers on the other side and in their closing argument to tell me why your doomsday prediction should be discounted, because I -- obviously, I don't want to jeopardize the timetable that we're trying to reach. I made a commitment, and everybody in this case, I think, has made a commitment to make sure we meet that deadline.

So -- but I can't ignore their rights. So, I -- let's not -- I don't want to turn this into a -- something it isn't. Go ahead and tell me what else you want to do and then we'll hear from the --

MR. SLACK: So, I'm going to turn it over in a second.

THE COURT: Okay.

MR. SLACK: But I'm going to say, Your Honor, that it's not worth the risk.

The point here, Your Honor, is I can't sit here and have a crystal ball and tell you that -- how people are going

to vote. What I am going to tell you, Your Honor, is that people are -- is, I think, people are going to want to know what they're getting, and at this stage, that's what -- that is why the Musicland factors read like they read. They said if you are going to bring this class action and you want a class-action treatment, bring it back a year ago at the time of the bar date, that's what Musicland says; that's the time to do it; do it early.

When you cause jeopardy and risk, this Court and the debtors and the other constituents who are parties to the RSA shouldn't have to bear the risk of a late filed --

THE COURT: Well, yeah --

MR. SLACK: -- 7023.

THE COURT: -- isn't it ironic that in PG&E 1 and in the Local Rules of the Northern District, perhaps a minority point of view throughout the country, the bar date is very early, and in PG&E 1 we made it even earlier.

So in this case for obvious reasons because of the fires, the bar date was pushed quite late, and then for other reasons even beyond that. But if we say well, what was the first -- what was the bar date in this case finally? It was October 21. Their motion was two months after that. That's not a huge time -- no, no, I'm sorry. Yeah, that's right. Today's motion was filed two months after that bar date.

MR. SLACK: Right.

THE COURT: That's not a huge time period.

MR. SLACK: I mean, just to be clear, I mean what Musicland says is that at the time the bar date is set, not the time of the bar date --

THE COURT: Okay. Okay. But I mean --

MR. SLACK: -- which is earlier. But remember, there was no -- there's nothing -- and these -- you look at the cases, they say this -- there's nothing preventing folks -- they were in this court February, March of 2019 -- from coming in at that time and making this motion, and that's what the cases say.

And so it's not a two-month period, but even if it was a two-month period, when you've only got five, a two-month period sounds like --

THE COURT: No.

MR. SLACK: -- a pretty long time.

THE COURT: Okay. All right. Let --

MR. SLACK: Anyhow, Your Honor, thank you very much.

THE COURT: Thanks, Mr. Slack. All right.

Mr. Nicholson, are you here? Richardson; excuse me. Wrong name. Mr. Richardson.

MR. RICHARDSON: Good morning, Your Honor. David Richardson of Baker Hostetler for the TCC.

Your Honor, I planned to start immediately with the relevance issue and not address Rule 23 issues, but before I

get to that, there is one issue that Mr. Slack just addressed that I think I must address.

THE COURT: Okay.

MR. RICHARDSON: That is dilution and how it affects the timing of plan confirmation proceedings, and the Musicland factor that goes to the impact that allows a claim or to file the claim would have on plan confirmation proceedings.

The TCC negotiated an RSA with the debtors that provide that the fire victim trust will receive 20.9 percent of the debtor's common stock. That is a major part of the consideration that went into the agreement to make the deal that's in the RSA.

There's a current understanding among our financial advisors of what that stock will be worth, and the extent to which it will help us pay all fire victims, but if there is to be dilution of stock, allegedly in the billions of dollars, we have to know before there is a disclosure statement what is the value we are asking fire victims to vote for? What is the deal we are asking them to vote for? Do we still have the deal we believe we signed?

I'm sure this Court has seen the many letters coming from fire victims who are complaining about stock --

THE COURT: Well, yes, I have seen many, but AB 1054 says what it says.

MR. RICHARDSON: It does, which means --

THE COURT: It doesn't --

MR. RICHARDSON: -- we have to know what value the trust is really receiving under this plan before it can be confirmed. And to do that, we have to know what these claims are worth, if anything, and to what extent they would dilute stock, if at all, that would be received by the trust.

This is not something that can be put off post-confirmation. We have to know quickly what the extent of these claims are.

THE COURT: Okay.

MR. RICHARDSON: As far as relevance goes, the securities plaintiffs have filed an action in district court against the directors and officers, the debtors, and certain third parties. They're the same claims, the same misdeeds, and the same damages.

THE COURT: But it is a fact, isn't it, that practically speaking, the debtors are out of that lawsuit. They're still not really in there, but they're not -- no one's asked for relief from stay.

MR. RICHARDSON: Exactly, but by filing a proof of claim here, they're taking the claim for damages from the debtor and moving it here into this case. If they have a direct claim, then they do have a claim for damages from the debtor.

THE COURT: Correct.

MR. RICHARDSON: But if what they've actually stated in that complaint, which is what I'm here to argue today, are derivative claims, then the debtor is merely a nominal defendant. You can't sue a debtor for damages in the debtor's own derivative action.

THE COURT: Well, I understand, but doesn't 510(b) take care of all that?

MR. RICHARDSON: What I'm arguing, Your Honor, is if these are derivative claims, the securities plaintiffs aren't even creditors of the estate. Everything the Court has heard this morning is irrelevant because they weren't entitled to notice, they aren't entitled to file individual proofs of claim, and they're certainly not entitled to assert a class proof of claim.

THE COURT: If they're derivative claims, yes, but therefore what? Suppose there is a derivative claim that's already been dealt with, and I thought the plaintiffs conceded that point in their papers, and you still don't -- you still think -- I mean, so let's try it a different way, Mr. Richardson.

MR. RICHARDSON: Your Honor --

THE COURT: If I decree that my hypothetical Mr. B. holds a derivative claim, what is the legal aspect -- the consequence of that?

MR. RICHARDSON: The legal outcome is that he has a

claim on behalf of the estates to assert against directors and officers and third parties.

THE COURT: Right.

MR. RICHARDSON: But does not have a claim to assert on behalf of the estate against the debtors for damages.

The claim in this case that they are filing and seeking as a class proof of claim is against the debtors.

THE COURT: But --

MR. RICHARDSON: There can be no claim against the debtors for a derivative claim.

So even though it is technically subordinated under 510(b), it has no value because they cannot ask for damages from the debtor. They can go after Ds and Os and the insurance policies, and we'll argue in the future about whether the recovery is met for the benefit of the estate.

THE COURT: So if it's a direct claim, then what?

MR. RICHARDSON: If it's a direct claim, they have a claim against the debtors, among other parties, and then we would be dealing with all of the Musicland factors and everything else argued this morning.

If the Court is prepared to deny the motion based on the Musicland factors which we think are enough, particularly in light of the dilution issue that I've raised, the Court doesn't need to reach the issue of whether these are direct or derivative claims until --

THE COURT: No, I realize that.

MR. RICHARDSON: But if the --

THE COURT: Well --

MR. RICHARDSON: -- possibility exists of granting this motion, the idea that these are not creditors of the estate is critical.

THE COURT: Okay. I understand your point. Let's back up.

So your point is that if they're derivative, there's nothing to it; if they're direct there is a dilution factor and, therefore, it needs to be clarified and discussed and analyzed.

MR. RICHARDSON: Correct.

THE COURT: It could be estimated under 502, right?

MR. RICHARDSON: That very quickly so we all know what the impact will be on the fire victim trust, that will hold up plan confirmation proceedings. And for all of the Musicland factors that have already been briefed, we don't think the motion should be allowed.

THE COURT: Well, no, but that -- if we had a direct claim just -- suppose we didn't have -- we had just another party who was not a fire party, wasn't in the fire but has an -- asserts a claim against the company that is unliquidated, this Court can estimate it.

MR. RICHARDSON: It can.

THE COURT: And could even today or now or as part of the pre-confirmation process could do so.

MR. RICHARDSON: And if it has no impact on plan confirmation, it might even be able to put it off.

THE COURT: Well, but -- correct. But --

MR. RICHARDSON: But a claim like this is critical.

THE COURT: But why couldn't I make a determination of an estimation of the claims which, therefore, would start with more precisely the analysis on is it derivative or direct? If the former, zero; if the latter, some amount. Whatever that amount might be based upon the evidence, it might be two dollars, it might be twenty billion dollars, but it could be estimated.

MR. RICHARDSON: Certainly, if the Court is prepared to grant the motion, that would need to be the type of procedure that would be -- that would follow very quickly. But I would like to explain why these are asserted as derivative claims despite some of the language in the complaint --

THE COURT: Okay.

MR. RICHARDSON: -- and why these parties are not creditors in this case.

THE COURT: Okay.

MR. RICHARDSON: The securities plaintiffs have told us that a case called Semtech is the case that proves that they hold direct claims.

In Semtech, Central District of California case, the corporation issued undisclosed backdated stock options for a period of years. During the class period, those remained undisclosed, and the financial statements were allegedly better than they should have been had they reflected those obligations and, therefore, the price of the stock was inflated.

When they became known, stock price dropped, there were claims for recovery. The court found that those are direct claims under the Securities Act. We don't have anything like that here.

These parties have filed a complaint against the directors and officers, the debtors, and third parties alleging that there were a variety of misrepresentations preceding the North Bay fires. Most of them go to vegetation management. Claims that the Vegetation Management Program was in compliance with state law, it was first rate --

THE COURT: Right. So I'm aware of it.

MR. RICHARDSON: -- putting more money into it.

THE COURT: I've read the complaint.

MR. RICHARDSON: And then the allege the North Bay fires happened.

From page 96 on to page 117, they allege in detail how three days after the North Bay fires, and for the next year and a half, the market and the public and governmental entities started to understand the nature of the liability that the

debtors faced for the North Bay fires.

Courts typically isolate the damages to determine what is the gravamen of the complaint? They collapse the transactions, so to speak. In this case, the first damages are fire victim damages. The debtors are on the hook for billions and billions of dollars of fire victim damages.

THE COURT: Right.

MR. RICHARDSON: CPUC fines and so on. The damage that made its way down to shareholders flows from that damage.

Under the case law we cited in our opposition, they have to be able to allege separate damage that is not incidental to the damage to the debtors.

In the case of Semtech, there was damage based directly on a misrepresentation that was shown to be false: stock dropped. Here, there were alleged misrepresentations, but there was a fire, an intervening tort event that caused billions of dollars of liabilities to the debtors.

The debtors, in turn, have claims to go out against their own directors and officers, third parties, contractors, and so on to recover some of those damages, and they've assigned them to the fire victim trust as valuable consideration. But the damages experienced by shareholders are simply a result of those damages to the corporation. They are not separate; they are merely incidental.

The case that actually is similar to this is one we've

cited in our opposition on pages 7 and 8 called Touch America. The Touch America case was the Chapter 11 case of the former Montana Power Company. It was a regulated electric utility in Montana. At the time, it was the counterpart of PG&E in Montana until its Wall Street advisors convinced it that it should sell off most of its utility assets and turn itself into a telecom company just as the telecom industry was collapsing. It ended up in Chapter 11. It's stock and its assets were worthless.

Mr. Julian and I now this case well. We represented the committee, and then the post-confirmation trust. The TCC's current FA, Brent Williams, was the trustee, and we pursued assigned D&O claims for the trust against directors and officers.

At the same time, shareholders were claiming that they had direct claims under the Securities Act because they were denied the right to vote on this restructuring.

We went before Judge Carey in the Delaware Bankruptcy Court and he, essentially, collapsed the transaction to determine the true nature of the damages. He determined that the damages were not caused by a lack of a vote, that the shareholders were not separately damaged by a lack of a vote. The damages were the restructuring that went forward at an inopportune time, cased damage to the corporation, put it in bankruptcy, and left the shareholders with shares of no value.

The critical point here is that it is not enough to allege that there were misrepresentations, violations of the Securities Act, and our shares went down. If the shares go down because of the larger injury to the corporation, and what we have here is a larger injury to the corporation.

Every single derivative action against Ds and Os involves omissions, misstatements that could be styled as securities direct claims if it wasn't for the requirement that they show separate damages.

No corporation says we're issuing an announcement that our directors and officers are committing negligence, so you shouldn't buy our stock right now. Rather, that comes out in the derivative claims that there were misrepresentations or omissions. No one was told about the negligence or the violations.

But unless shareholders can show that they had a separate injury that did not flow from the larger injury to the corporation, they do not have direct claims, and that is where we are in this case. Stock dropped in value because of fire damages that have put these companies in bankruptcy.

It would be a very different case if a month before the North Bay fires PG&E had put out a statement saying it's come to our attention that our Vegetation Management Program is not compliant with California law. The next day, the stock might have dropped a percent or two. It would have reflected

the adjustment of -- accounted for that misrepresentation because now shareholders would recognize that they have been misled and there might be a greater risk of a possible fire down the road. We don't have that here. That would have been Semtech. What we have is a fire that caused major damage to the corporation and flowed down to shareholders just as it flowed down to every other party in these cases.

THE COURT: And why is that -- isn't it different from a company that says we're doing everything properly when, in fact, they weren't doing it properly?

MR. RICHARDSON: I'm not saying there weren't misrepresentations. That's element one.

THE COURT: But well, again --

MR. RICHARDSON: -- of the direct claim.

THE COURT: Okay. So we're -- and we're doing it properly when, in fact, they were not doing it properly, and then, of course, there were the fires and that's what, obviously, was so precipitous. But wasn't there not damage to the individual shares that that -- even before the fire then because of the misrepresentation?

MR. RICHARDSON: The misrepresentations, they were --

THE COURT: If I bought the stock in reliance on the management telling me everything's hunky-dory, we're not doing fire, we're not at any fire risk, aren't I misled if I'm not told they were cooking the books and falsifying the records?

MR. RICHARDSON: And that argument would erase the rule. It would erase all case law that deals with ordinary situations where damages against the company drive it into bankruptcy and the stock drops.

Every asbestos case would have had direct shareholder litigation based solely on the fact that they were not told certain aspects about the damages of asbestos before the company went into bankruptcy.

THE COURT: Well, if the company had filed bankruptcy before the fires for other reasons, there might have been a claim for you didn't tell me that the stock was going to -- was false. You didn't tell me that the misrpre -- the statements about compliance were not true.

MR. RICHARDSON: Correct. That --

THE COURT: Right?

MR. RICHARDSON: -- that is an argument that erases the rule. The Court --

THE COURT: Well, I guess I'm not following you when you -- explain that again. I don't understand what you would mean by erases the rule. Which rule? The rule that there can be no direct claim?

MR. RICHARDSON: Yes. The rule that requires that in order for there to be a direct claim, they have to have a separate measure of damages that is distinct from the damage to the corporation.

THE COURT: Yeah, but --

MR. RICHARDSON: If there --

THE COURT: Okay.

MR. RICHARDSON: Let me put it this way.

THE COURT: Okay. Okay.

MR. RICHARDSON: If there had not been a North Bay fire, six months later the stock would likely have been at around the same level, maybe higher. They could have sold their stock and made a good investment on it. They weren't harmed by the misrepresentation until there was a fire that destroyed the company.

THE COURT: Okay.

MR. RICHARDSON: The damage that they incurred is a result of the fire. It flows from the fire and is not independent. Because it is not independent, the claims that they have alleged that say that all of their damages stem from the North Bay fire and a realization, the impact it would have on the company are derivative claims --

THE COURT: Are derivative.

MR. RICHARDSON: -- and, therefore, they're not entitled to notice, they cannot file a claim in this case, and more importantly if they have not alleged -- I'm not asking the Court to make a final ruling on whether these claims are final or direct, it goes to what they've alleged at this point -- if they have not alleged direct claims properly by not alleging

separate and distinct damages, then they should not be allowed to upset the plan confirmation process at this late stage. It goes to the Musicland factors as well as going to the question of whether they're even creditors of the estate.

THE COURT: Okay. I appreciate your point. All right.

MR. RICHARDSON: Okay.

THE COURT: I'll hear -- I have ten minutes for plaintiffs, and then we're going to --

MR. KAROTKIN: Your Honor, may I have a couple of minutes at some point?

THE COURT: Sure. Go ahead. I didn't know I was going to hear from you, but Mr. Karotkin.

MR. KAROTKIN: Your Honor, Steven Karotkin, Weil, Gotshal & Manges for the debtors.

Just to address a point or two that you raised about gumming up the works. And I think this is a classic case of gumming up the works, and I think it's important to keep in mind, Your Honor, that the debtor's plan is premised on twelve billion dollars of new equity investments; many of which are coming from existing equity holders.

The impact of this potential claim on that investment, not only from the standpoint of how much equity will those people own in the reorganized entity from the standpoint, also, of how much of their existing holdings will be diluted by this

potential class proof of claim will substantially gum up the works here, Your Honor.

A couple of other things. This is not just equity. They're also asserting claims for cash based on notes to the tune of several hundred million dollars, additional financing if they are successful that will have to be required for plan confirmation.

And Your Honor, I'd just like to go back to one thing Mr. Slack alluded to that you didn't find terribly compelling. The fact of the matter is where were they -- and I know you say these are not fire claims -- but where were these people when the bar-date motion was filed? Where were they? Why didn't they come in like other people came in --

THE COURT: Well, listen, I mean he's argued -- Mr. Slack made this argument.

MR. KAROTKIN: But let me address it if I could.

THE COURT: Yeah. Okay.

MR. KAROTKIN: If you would indulge me for a minute.

Other people did come in besides fire claimants and said that the notice wasn't robust enough. Why didn't they come in? Why didn't they come in and say well, Your Honor, you know, the debtors should give the notice that counsel referred to today, they should do the class-action procedures? Why didn't they do that? And I think the answer is pretty obvious, because if they had done that, then any effort on their part,

on the part of the lawyers to get a class action would never have happened. And therefore, we wouldn't be here today, they wouldn't be seeking class-action status, and if they had really cared about the claimants as opposed to the lawyers being able to prosecute a class action, and I don't want to say, Your Honor, get the fees associated with that, we wouldn't be here today. And that's the whole point of this proceeding.

They had plenty of time to come in and ask the Court to give appropriate notice. They didn't. They waited two months before they sought class-action status and why did they do that? I think the answer, that's pretty obvious; because they wanted to wait and try to gum up the works to extract a settlement, and that's why we're here today. Your Honor, this clearly will gum up the works.

As you'll hear from me shortly, and as you already know, Your Honor, we have a global consensus here to get this case out of Chapter 11 on a timely basis. This will --

THE COURT: Yeah --

MR. KAROTKIN: -- gum up the works.

THE COURT: Okay. I got to come back -- I will come back to you, but I'm trying to juggle the timing here.

All right. So let me hear back from the plaintiffs. Mr. -- well, whose -- which of you is going to do it? Mr. Elkin (sic) or Mr. --

MR. ETKIN: I'm going to --

THE COURT: Mr. Elkin (sic), please.

MR. ETKIN: -- I'm going to deal with a couple of the issues, Your Honor --

THE COURT: Yes.

MR. ETKIN: -- and Mr. Behlmann will deal with --

THE COURT: Okay.

MR. ETKIN: -- the notice related issues.

Let me work backwards with respect to the TCC's claims of dilution.

Your Honor, this -- there's no dilution with respect to the value of the stock. They get 20 -- they get 20.9 percent of the stock from a value perspective. This is a question of whether some of those shares of stock would go to satisfy the claims of the frauded investors or not.

THE COURT: Well, that is --

MR. ETKIN: This has nothing to do with --

THE COURT: Well, that's a dilution, then, isn't it?

MR. ETKIN: Well, it's a --

THE COURT: I mean, of course it is.

MR. ETKIN: It's not a dilution to the TCC. They're getting what they're getting. The value that they're getting --

THE COURT: I don't quite follow that.

MR. ETKIN: Well, Your Honor --

THE COURT: That doesn't sound right. That sounds

like I'm going to pick your pocket, but you're not going to lose any value.

MR. ETKIN: No. We're not picking the TCC's pocket.

THE COURT: Well --

MR. ETKIN: The TCC's get -- there's going to be a valuation of this debtor, and that's going to determine what the price of the stock of the reorganized debtor is or what the value is, and the TCC gets 20.9 percent of that.

Now, there may be dilution --

THE COURT: And what if it is lowered because twenty-five -- twenty percent of 2X is -- I mean, twenty percent of X is lower than twenty percent of 2X, because they -- under what we just heard Mr. Richardson point out, if the shares that would otherwise go -- all twenty percent of the shares would go to the victim's trust, a portion of it goes to the plaintiffs' trust -- I mean, the class-action plaintiffs' trust. That sounds like a dilution to me.

MR. ETKIN: I don't believe it is a dilution with respect to the value. Your Honor, as we understand it, the fire victims --

THE COURT: Well, no, it's not a dilution as to the value. It's a dilution of the pie -- there's another slice of the pie handed to somebody else.

MR. ETKIN: Yeah, but not --

THE COURT: The pie doesn't get --

MR. ETKIN: -- not the fire victim slice.

THE COURT: Well, how does -- why -- it's the pie.

MR. ETKIN: Because if --

THE COURT: The fire victims are getting cash --

MR. ETKIN: Correct.

THE COURT: -- and equity.

MR. ETKIN: Correct. That's correct.

THE COURT: Okay.

MR. ETKIN: So if the stock -- if the value of the stock, let's say, is 10 billion dollars for the sake of argument, the value remains the value and the fire victims get 20.9 percent of that value. We're not -- we're not going to be impacting the value of the stock coming out. We're going to be impacting, perhaps, the stock that's available for existing equity holders under the plan. So I don't see that dilution at all.

THE COURT: Okay.

MR. ETKIN: Again, we're subordinated creditors. The fire victims are getting value in the form of stock of the reorganized entity, and it's -- I believe, it's 6.75 billion of PG&E common stock. I think that's where it comes out. And it's not less than 20.9 percent of the total. That will -- that will be unaffected.

Of course, the class members or not going to be signing on because it's just a practical impossibility to

participate in the rights offering unless they do so independently. So there's going to be no impact there.

There's a slice of stock that's going to be available for distribution to existing holders, and that's where the interest of the frauded investors may come in.

Your Honor, the entire derivative claim argument really escapes me totally. They can see that there are misrepresentations. They can see that the misrepresentations may have affected the price of the stock, that the stock ended up being lower because of the misrepresentations, and if they would disclose, there may have been a different approach taken by purchasers of that stock.

These are garden variety securities-fraud claims, based upon misrepresentations, and stock that was purchased on an average of fifty-five dollars a share --

THE COURT: No, you said that before.

MR. ETKIN: -- during the class period, and they end up being worth much, much less, and by virtue of the fires, yes, but because of the failure to disclose whether misrepresentations.

Your Honor, what I find baffling is that the debtors pronounced an adversary proceeding in order to enjoin the claims of the class members, but never raised the issue, as I would have assumed they would have if they felt that there was anything to it, that you can't go forward with these claims;

they're ours. They're derivative claims. You should be enjoined.

Now, that's precisely what the debtor did with respect to the derivative lawsuit that was pending pre-petition. They moved to enforce the stay, Your Honor issued a tentative, and the derivative plaintiff, as they should have, walked away. That's not our case. That's a separate case.

Your Honor, the parade of horribles that Mr. Karotkin just laid out we're hearing this for the first time, and, frankly, I'd go back to what the Court said previously about the ability to estimate for voting purposes the ability to resolve these claims. It's really a function -- claims are left unresolved post-confirmation all the time, even large claims, significant claims. It's a function of disclosure, plain and simple.

And with respect to the citation of the Amdura court -- the Amdura court's decision by Mr. Slack -- let me just read the quote that appears in our papers. The Amdura court held "publication alone as to members who no longer held securities was insufficient to satisfy due process where representatives have taken all necessary steps to file class proof of claim in bankruptcy case, both debtor and the bankruptcy court were aware of the existence of the individual creditors and debtor could have obtained a list of creditors' names and addresses from representatives." That's what the

Amdura court said.

And as it relates to the other case that the debtors seem to depend upon for their position, and that's the GAC case, that case was decided in 1982 before all of the jurisprudence with respect to class proofs of claim, and the debentures at issue there were not publicly traded, and the debtors were not even aware that the purchasers had claims according to the GAC court.

The debtors were very much aware of the class claims in this case.

THE COURT: They were. That's right. Okay, listen, I need to wrap up --

MR. ETKIN: Sure.

THE COURT: -- so let's hear what Mr. Behlmann's going to --

MR. ETKIN: And briefly on Alonso, Your Honor, let me just make a couple of points.

First of all, it's not securities litigation, it's not subject to the PSLRA stay --

THE COURT: Well, why does that matter?

MR. ETKIN: It matters because there was nothing that we could do given the PSLRA stay in terms of pre-petition class certification.

THE COURT: You could have filed a motion. You could -- I think the other side's argument is you could have

filed your motion for class treatment. The PL -- whatever that acronym is -- that didn't stop -- that doesn't affect you from doing something in the bankruptcy court.

MR. ETKIN: That's correct, Your Honor, and we did. We made our motion.

THE COURT: Well, no, but I mean, their point is you made your motion way too late.

MR. ETKIN: Well --

THE COURT: That's the point that I have to reconcile.

MR. ETKIN: And I understand that, Your Honor.

THE COURT: Okay.

MR. ETKIN: We -- I don't want to repeat that --

THE COURT: Good.

MR. ETKIN: -- during the course of our initial argument.

Your Honor, you also held in connection with the -- with your tentative ruling that the proof-of-claim process was sufficient to deal with the alleged wrongdoing in the Alonzo case which were wage and hour claims.

THE COURT: Yeah.

MR. ETKIN: And presumably -- and you noted the difference yourself -- presumably employees know whether they're owed money or not or believe if they're owed money -- they're owed money or not. Very different than the circumstances with absent class members.

And the last thing I wanted to mention, Your Honor, was let's not forget that the debtor did exactly what you would have to do in order to identify -- this was the Schwab statement that the Court made -- they did exactly what you'd have to do by contacting nominees to identify holders of the stock on the record date.

They reached out, and they sent them packets, and the nominees needed to send them out to beneficial holders. The point is that that's precisely what could have been done, and the idea of getting an order of this Court to the extent that it was necessary to compel the nominees to do what the debtors were asking them to do is not, by any stretch, a heavy lift, but even without that order, they were directed to do -- they would have been directed to do something by the bar-date notice, and while you, perhaps, couldn't enforce it by the strength of a court order, that would have, at least, potentially solved the problem.

THE COURT: Okay. Let me hear from Mr. Behlmann, and then we're finished.

MR. BEHLMANN: I will keep this very brief, Your Honor.

There was one point Mr. Slack made that I wanted to respond to. It was -- it was made in passing, but I absolutely cannot leave this unaddressed.

Mr. Slack noted that in the debtor's view, notice

through nominees is "another form of constructive notice". That is absolutely wrong, completely wrong.

Constructive notice, you put the notice out in the world, you put it out in a manner that you hope somebody sees it, but you don't take any steps to actually get the notice into their hands.

Actual notice is where you take a reasonable step, you undertake reasonable efforts to get the notice into the hands of the person you want to have the notice. That is what the procedure that Your Honor spoke about in the case of Schwab if you own five shares of ABC, that is an effort, giving that notice to the nominees to put the notice into your hands. That is a form of actual notice. That is why that form of notice is used in securities class actions to comply with Federal Rule of Civil Procedure 23(c)(1)(B) which requires in a (b)(3) class that you give individual notice to class members where you can do so through reasonable effort. That is the reasonable effort.

And one final point related to the Amdura case that both Mr. Slack and Mr. Etkin mentioned, the outcome in that case when the district court reversed and remanded, it also held that if the bankruptcy court did not invoke Rule 7023, the debtor would have to go out and give actual notice to all of the absent class members and reopen the bar date for them. That is -- that would gum up the works if anything in this case

would gum up the works, and that would be the outcome here.

The debtors would like to wave that off and assume the constitutional due-process problem just goes away if this motion is denied. But the problem is still there, and the problem still has to be remedied, and the remedy that we're proposing is infinitely more efficient than anything else that's on the table right now.

THE COURT: Okay. Thank you all for your arguments. The matter stands submitted. I'll do my best to deal with it promptly. I can't promise it. I'll do what I can.

Mr. Karotkin, I committed to everyone that I would not go on one of my marathon court hearings, can we finish discussing Chapter 11 scheduling, et cetera, by 12:20 so we can take a break before the 1:30 calendar? I have a few questions. I don't know what you and others --

MR. KAROTKIN: I have a --

THE COURT: -- you have in mind.

MR. KAROTKIN: I'm sorry.

THE COURT: Well, I mean, I have a few things to raise with you but even if I didn't, do you have a kind of an outline of what you think we should cover, and then would it be better just to resume and start later at the -- the Tubbs hearing this afternoon is discrete? It's only -- I've only allowed a short period of time. What do you think would be more efficient?

MR. KAROTKIN: I think I could give a brief statement

on the status conference --

THE COURT: Okay.

MR. KAROTKIN: -- in five or ten minutes, and I have a proposed time line for moving the cases forward that I could submit and hand up to the Court.

THE COURT: Okay. Let me, then, give you a -- not something you need to respond to, but it's sort of on my to-do list, and maybe it's part of -- it's on your list as well. And so in no particular order here are things that I feel that I need to make sure we deal with.

There was a recent letter that I'm sure you were copied from counsel for the trade creditors about asking that there be some resolution to make the pre -- post-petition interest matter get teed up to be certified. So I'd like to hear from you on that. And when we can, I had on my list that I need to have a -- some critical dates for targets, at least, for when the plan -- the latest version of the plan will be filed, when you think we should have a disclosure statement.

Then on a broader subject, this question that I raised on a couple of earlier orders about the content of it and who's going to get what extent of notice. And then what your idea of a target of the -- of a confirmation schedule would be.

Then on another, unrelated to that, we had papers filed earlier by San Francisco and some other creditors dealing with the issue that maybe is academic if the bondholders --

senior bondholders' claim is going to go away. So we don't have to worry about the so-called municipalization issue any more, right? You remember that? Those were Valley Clean Energy and South San Joaquin Irrigation and City of San Francisco, they all raised that. You know what I'm talking about?

MR. KAROTKIN: I think they spoke with me after one of the hearings.

THE COURT: Okay. Well, I mean, they all filed something to take issue what was in the senior bondholders' plan.

MR. KAROTKIN: Yes. They've raised that with me.

THE COURT: And I assume that goes away now. And -- well, you tell me. Those are things that we just need to address.

MR. KAROTKIN: Yes.

THE COURT: And then the question of the issue about the discharge for governmental entities. Those same three creditors raise that question.

And then some time ago the federal government -- I'll say FEMA but it's the attorneys for the government for governmental agencies and the state, various agencies have raised these questions about trust governance, trust structure, trust details, and I hope we've got some information about that to talk about.

And then the last thing that's kind of on my to-do list is really a -- it's a rehash of what I said before about the contents of the disclosure statement.

It is true that I, and I'm sure many of the TCC counsel and maybe lawyers in your firm are hearing from a lot of people writing to me, writing to you, no doubt, about I don't want stock, what's going to happen, how am I going to get paid, and I am concerned about the precedent that is being followed in a few instances here of moving very, very quickly, and I don't want to move very, very quickly when it's time to make sure that there's an adequate disclosure of the kind of nuts and bolts that has to be disclosed, but also the kind of simplified disclosure statement, or portion of a disclosure statement, that needs to go the tens of thousands of people that just don't need to have a 500-page disclosure statement.

You know, I said this before; I hope that's on your list. So your turn. Those are my issues.

MR. KAROTKIN: Okay. So just by way of an update which I'm sure you're already aware of -- and by the way, today's the first year anniversary of the fire.

THE COURT: That's right. I think I mentioned that to you too.

MR. KAROTKIN: So in honor of the first year anniversary, as you're aware on Monday, we filed a motion seeking approval of the restructuring support agreement that we

reached with members of the ad hoc committee of senior noteholders and others, and you have set a hearing on that for February 4th. Subject to Your Honor's approval of that restructuring support agreement, the debtors have now achieved a comprehensive global consensus with respect to their Chapter 11 plan. Approval of the noteholder RSA will eliminate the ad hoc committee's competing plan.

THE COURT: Am I right there; they committed, upon approval, they will withdraw --

MR. KAROTKIN: Yes, sir.

THE COURT: -- formally withdraw the plan.

MR. KAROTKIN: Formally withdraw.

THE COURT: Okay.

MR. KAROTKIN: They will withdraw their motion for reconsideration -- or suspend their motion for reconsideration with respect to Your Honor's orders approving the tort claimant's RSA and the subrogation claimants' RSA.

The make whole dispute will be suspended as well because that's resolved as part of the plan treatment.

The dispute as to post-petition interest with respect to their claims has been resolved, and they will withdraw their objection to the debtor's request that Your Honor approve the terms of financing for their plan.

THE COURT: So again, I haven't had a time -- an opportunity to review the new RSA, but do I assume that that

plus whatever the next iteration of a plan will put into play in the plan, the compromise of the post-petition interest and the --

MR. KAROTKIN: Yes, sir.

THE COURT: -- make whole treatment?

MR. KAROTKIN: Yes, sir.

THE COURT: Okay.

MR. KAROTKIN: The plan will be revised to reflect the treatment that's been --

THE COURT: So you're not -- this is not being addressed as a traditional 9019 settlement or anything, it's just it's the plan and --

MR. KAROTKIN: It's the plan.

THE COURT: -- they've agreed to it.

MR. KAROTKIN: Yes.

THE COURT: Okay.

MR. KAROTKIN: And they've agreed to support the plan moving forward.

THE COURT: Right.

MR. KAROTKIN: And as we've indicated in our pleadings, we believe that with this restructuring support agreement, the debtor's cases are now on a smooth path toward confirmation within a time line of AB 1054, June 30th.

You mentioned the ad hoc trade committee, we will hear from then and we can address the issues with respect to the

post-petition interest, but I'll save that for later.

We don't believe that's any impediment to moving forward with confirmation of a plan.

THE COURT: Well, I mean, we can -- are you willing to have me turn that into an order and make a 54(b) certification on that issue?

MR. KAROTKIN: Well, Your Honor, we think it's more appropriate for that to be deferred until confirmation. You can rule on that and have that order issued in connection with the confirmation hearing, because as you said it is a confirmation matter. I think that risks two appeals. One that could happen now and one that could happen in connection with the confirmation order --

THE COURT: Yeah.

MR. KAROTKIN: -- and appealed by other parties. We don't think that's the right way to proceed.

THE COURT: Is the new version of the plan going to set aside a reserve in case that -- that particular issue goes the other way? I mean, are you --

MR. KAROTKIN: It is not our intention to do so, but --

THE COURT: Well, you had -- it was in the prior plan, though, right?

MR. KAROTKIN: In the prior, yes, we provided that we would modify the plan to the extent Your Honor ruled against

us.

THE COURT: Right.

MR. KAROTKIN: Your Honor has not ruled -- you ruled in our favor.

THE COURT: Right.

MR. KAROTKIN: So we don't see any reason to do --

THE COURT: And in simple terms -- right. If I had said that you have to pay contract interest, you would have -- I think -- or thought you would say you were going to commit to it but reserve the right to appeal it and scale it back.

MR. KAROTKIN: Yes, but you ruled the other way.

THE COURT: Correct.

MR. KAROTKIN: So there's no reason to put in the plan that we will treat them differently from what you've already ruled.

THE COURT: But are you going to be in a position to protect against an adverse ruling against -- in favor of those who might appeal that aspect of the plan?

MR. KAROTKIN: Your Honor, I think that that's something you can address at the confirmation hearing.

THE COURT: Okay. So you're view at the moment for the reasons you stated, this is not something that should be the subject of an order now.

MR. KAROTKIN: Right. This is no longer a gating issue in view of the settlement with the bondholders. This

is --

THE COURT: Well, that's what I assumed.

MR. KAROTKIN: Yes. Okay.

Now, Your Honor, we're well aware of the issues that have been raised by the governor's office with respect to the debtor's plan. We are engaged in, what I believe, are constructive discussions with the governor's office, and I believe that we will be able to resolve those concerns.

We are also moving forward with the CPUC approval process.

And as I mentioned, with all of these accomplishments and the global consensus that's been achieved, we're on track to meet the June 30, 2020 deadline.

Now, addressing a proposed timetable for the disclosure statement, could I approach?

THE COURT: Yeah, and I have in front of me for what it's worth, the proposed timetable that you filed before, several months ago, and I'm -- I can look at it if I need to, but I've got it. So we can compare dates here. And --

MR. KAROTKIN: So this, Your Honor, is the suggested timetable.

THE COURT: Okay, I can read --

MR. KAROTKIN: It's not pressed in --

THE COURT: -- I can read it, but why don't you --

MR. KAROTKIN: Yes.

THE COURT: -- just state it so -- for those who don't have it or are on the phone or otherwise can hear what you're saying.

MR. KAROTKIN: Sure. It's meant to be an indicative timetable. It's not cast in concrete. We're not asking you to enter an order setting forth any particular timetable at this point, but this is how we see things moving forward today subject to your input and others input as well.

We would be filing an amended plan at the end of this week which would incorporate the noteholder RSA terms for the treatment of their -- of the claims of those particular creditors and as well as some other cleanup items.

On February 7th, we would propose to file a draft disclosure statement, as well as a motion seeking approval of the disclosure statement, solicitation procedures, ballots, notice, and setting a hearing to consider confirmation of the plan.

THE COURT: So how -- when would you want that to be heard?

MR. KAROTKIN: Well, then, that's March 11th. If you look at the next date --

THE COURT: Um --

MR. KAROTKIN: -- we would ask that that be heard -- suggest that that -- the hearing to consider approval of the disclosure statement as well as the voting procedures be set

for March 11th. And we haven't -- by the way, Your Honor, we haven't checked any of these dates with your --

THE COURT: No, that's okay. I mean, I assume that I belong to you for the coming months. Well, let me just tell you ahead of time, I'm going to -- I'm going to put in an intermediate time by which objections have to be filed and a meet and confer for principal players, and possibly even -- well, at least that, because a lot of -- my view is objection to disclosure statement can easily be dealt with by disclosing more.

MR. KAROTKIN: Exactly.

THE COURT: Except in the case where we want to keep the disclosures relatively simple.

MR. KAROTKIN: Yes. And I will tell you, we -- we have taken your admonition that this is -- the draft that will be filed, will be substantially different from disclosure statements that I think people in this room have been familiar with in other cases. It is not a telephone book. We have tried to make it relatively simple. We have tried to gear it toward the fire claimants which we think is critically important here. I am sure people will have comments, but that is how we have approached this taking --

THE COURT: Are you free to tell me there's been some colloquy with representatives of the TCC on that -- on the very same subject on the disclosures?

MR. KAROTKIN: Yes.

UNIDENTIFIED SPEAKER: Yes, sir.

THE COURT: Okay. Good. Okay. Well, we can come back later to -- I mean, you go ahead and finish with the sequence here.

MR. KAROTKIN: Sure. Assuming approval of the disclosure statement and solicitation period within the time frame, the March 11th time frame, we would see a deadline to vote of May 15th, 2020. I think, Your Honor, it's important to keep in mind the extent of the notice that has to be given with respect to voting in view of the tens of thousands of fire claimants, the public shareholders, other creditors. It's a massive undertaking so we have --

THE COURT: I'm well aware of that.

MR. KAROTKIN: -- and we want to make sure that, particularly, the fire claimants have sufficient time to vote. And we've been working, by the way, with the -- with the tort claimants' committee and the attorneys to -- I don't like to call it streamline, but to come up with a very, very efficient manner in which to solicit the votes of fire claimants. It will be something a little different from what you're accustomed to.

THE COURT: Good.

MR. KAROTKIN: But we have been working very, very closely with them to come up with a process that facilitates

getting the votes in timely and appropriately.

THE COURT: Well, but back up. And again, I presume you've already thinking about this, their votes have to come in, because they have to be able to understand what they're doing, and they don't -- this is back to my no phonebook rule -- and I went back and looked at the national rules, and the national rules allow you some flexibility in disclosures, and then there's kind of disclosures of disclosures. And so you could have a summary, and then refer anyone to the more detailed --

MR. KAROTKIN: Yes.

THE COURT: -- if they wanted, either through website or access. Okay. You're on top of it, I hope. I think.

MR. KAROTKIN: Yes. We're trying. We're trying.

So again, based on that time line with the voting deadline of May 15th, we would also have the same date as the date for filing of objections to confirmation.

THE COURT: Okay. On that subject, again, it's been my practice, and I think it would be important on this case is to have a status conference by and attended by principal counsel of objectors. I mean, we have principal counsel on everything here, but the point is, if creditor A is objecting to confirmation, I want creditors' A lawyer at a hearing early on with you and the other principal lawyers to talk about, okay, what are you objecting, what is the legal question to

that question, and so on. So I don't want one of these things where they're in the dark.

So anticipate, essentially, the equivalent of a trial scheduling conference and an adversary proceeding with the adversary proceeding be our confirmation or -- and maybe even necessary, our disclosure statement hearing -- each time that we have a preliminary hearing to see --

MR. KAROTKIN: Sure.

THE COURT: -- flush out the objections, okay.

MR. KAROTKIN: And we can build that into any proposed scheduling order.

We would --

THE COURT: Well, let me -- let me go back to what that disclosure statement is going to look like in big terms.

And again, if you don't recall -- because I just asked you what was filed by both Mr. Pascuzzi for the State, and I think it was Mr. Troy for the federal agencies, they were fairly detailed about wanting to understand early, rather than later, stuff and took -- I think they both took issue with something in one of your prior drafts that some of these operative documents would be filed much later. That's -- that's not going to work. They got to get -- they got to be done early.

MR. KAROTKIN: Yes.

THE COURT: Is that consistent that at some point

early on this time line things like the meet and -- the nuts and bolts of the trust documents are going to be there for people to read and understand?

MR. KAROTKIN: Yes. And the TCC has been working hard on getting drafts of those documents completed so that there will be plenty of time for people to review them in the context of voting.

THE COURT: Okay. But I mean, it could mean as much -- as simple as just -- it's time just to make sure they know. Again, I'm not suggesting that individual fire claimants shouldn't be allowed to know things, but they're trained and experienced lawyers, and particularly bankruptcy lawyers know how to work through all these details so we don't -- we need the early rather than later disclosure of who's going to be the trustee, what are the rules, what are the procedures for mediation versus mandatory arbitration versus submission, et cetera, et cetera. So that -- those are all on your list, right?

MR. KAROTKIN: They're all on my list.

THE COURT: Okay.

MR. KAROTKIN: Yes.

THE COURT: Okay.

MR. KAROTKIN: All of those items may not be in the initial draft of the disclosure statement, but by the time it's approved it will include all of that information, but we need

to get the time -- we need to get the process moving, Your Honor, in order to meet the deadline.

THE COURT: Yeah. No, I'm well aware of that. And is this, in your mind, is this consistent with the OII and what's going on in CPUC?

MR. KAROTKIN: Yes.

THE COURT: What will I be looking at -- and you're going to say the plan or the disclosure statement. Let me try it a different way. How are you going to show compliance with 1054 as distinguished from the Bankruptcy Code? You and I and every bankruptcy lawyer in the room knows the checklist in Section 1129, but not many of us know what it takes to pass muster with 1054. I'm sure you do more than I do. So how are you going to address that? How will that be on the table where at least the prima facie case for compliance with that statute will be demonstrated?

MR. KAROTKIN: I don't think, Your Honor, that would be in a disclosure statement. I think that would be in a subsequent submission in connection with, for example, filing our brief --

THE COURT: Well, yes. I mean --

MR. KAROTKIN: -- in support of confirmation.

THE COURT: The governor, I mean, I'm not going to say the governor can't vote. We know who can vote on the plan. But whatever it takes to satisfy 1054, to me it isn't -- it

probably isn't a disclosure item. It's like if you -- I think I gave the example in the first PG&E case. Well, you still have to show how you're complying with other law, so --

MR. KAROTKIN: Yes.

THE COURT: So to the extent that other laws -- and by the way, this is what Mr. Pascuzzi said specifically. There are a whole long list of other California laws that those agencies need to be satisfied are being dealt with. And that's an example that is on my list. That's the same thing I would put in that 1054. So how are you going to show that?

MR. KAROTKIN: I think that that would be something we would demonstrate in the context of the confirmation hearing. We would be submitting a brief in support of confirmation. I know that Mr. Kornberg's client has the ultimate voice on compliance with AB 1054, and hopefully he will be in a position to stand up in court at the appropriate time to say that the plan complies.

THE COURT: Well, I'm hopeful, because you've said you are confident that you're going to work with the governor. But what do we do if the debtor says I'm in compliance and the governor's office says you're not? Is that something I decide or the governor decides? Or Mr. Kornberg decides?

MR. KAROTKIN: I think it's something Mr. Kornberg's client decides, but I don't think we have to get into that today.

THE COURT: That's fine. I'm not. I'm not getting into any of the merits of it.

MR. KAROTKIN: Right.

THE COURT: But it's just a question of scheduling. Well, do you want to have me approve this?

MR. KAROTKIN: No.

THE COURT: Or do you want me to -- what do you want me to do?

MR. KAROTKIN: I want you to say you think this looks like a reasonable schedule.

THE COURT: Well, let's see what you told me last time. Your original disclosure statement was January 15th. Then we had the estimation, et cetera. We had amended plan and amended disclosure statement March 10th, so --

MR. KAROTKIN: How about that, huh?

THE COURT: How about that? Hearing on approval of the disclosure statement was March 20th. So yes, and --

MR. KAROTKIN: As you know, that was in the context of a much more contested thing.

THE COURT: No, I understand that.

MR. KAROTKIN: And we've been trying to make your life easy.

THE COURT: No, I think that again, you know, and Mr. Kornberg and everybody else knows better than I do that if this will fit everything else, it certainly can fit our schedule. I

don't know how long we're going to have.

Well, can you speculate, assuming no objections -- what a wish list -- how long would the confirmation hearing be? I mean, is it going to be -- are you going to do a huge presentation, or is it going to be something that would be a summary? I mean, I don't -- we don't know. I don't know how to --

MR. KAROTKIN: Assuming no objections?

THE COURT: I don't know how to schedule it, yes.

MR. KAROTKIN: Assuming no objections, I think it would be -- we would do it by declaration, and it would be very quick. A declaration setting forth how we meet the requirements of 1129 and the appropriate submissions by the CPUC and any other parties-in-interest.

THE COURT: Well, I have a suggestion. See how this works for you. I obviously have to make a decision on the Rule 23 motion.

MR. KAROTKIN: Right.

THE COURT: And you and the others have stressed for me the importance of it, and I understand. It's important either way, and if I deny the motion, it probably makes things easy for scheduling purposes. If I grant it, to use that term, gum up, I mean, it'll impact, perhaps, or require further scheduling, I think. But that's something I'm going to be working on.

But what if we set aside some time on the 4th to fill in some of the details on this? And I looked at our calendar, and in the meantime maybe have my courtroom deputy talk to someone on your side, and we start to pencil in more specific dates, such as, for example, what I told you would be the status conference --

MR. KAROTKIN: Sure.

THE COURT: -- and the requirement that principal counsel participate to discuss confirmation objections and so on. Is that too -- I mean, does that work procedurally in terms of it's only what? Eight days. I mean, no, it's nine days from now, right?

MR. KAROTKIN: No.

THE COURT: Not even that many.

MR. KAROTKIN: No, it's less. It's only, like, four or five days.

THE COURT: It's fewer days. It's two days after the Super Bowl.

MR. KAROTKIN: It is.

THE COURT: It's two days after Groundhog Day. Think of it that way.

No, but if we take some time on the 4th, would that work for you?

MR. KAROTKIN: Sure.

THE COURT: If I respond to you and tell you that.

And before we end here now, I'm going to see if anybody wants to be heard.

Okay. Well, actually, does anyone want to be heard?

Ms. Dumas, do you want to be heard on this? I am going to stick with our schedule, and if we need to resume the hearing this afternoon I'll do it, but I'm not going to go straight through the break. So take your time now if you want, but don't -- if you need more time, we'll have it.

MS. DUMAS: Good afternoon, Your Honor. Cecily Dumas, Baker & Hostetler, on behalf of the official committee of tort claimants. I'll be very brief. I like to, however, take the opportunity when I come to the podium to both explain to others who may not be in the room but reading transcripts or listening, and yourself. We are aware, and we are taking very seriously the letters that are sent to Your Honor and posted on the docket. We read them. The team that is managing the website, the official committee website, is addressing some of these questions, and we are aware of the difficulty with so many forms of information that are floating around there of helping everybody get the story straight, because there are community message boards. There are Facebook pages. There are petitions.

THE COURT: change.org petitions.

MS. DUMAS: Yes. So there are all kinds of ways that victims of the fires are getting information, both correct and

incorrect. One of the main seems to be why do I have to take PG&E stock, which is a hundred percent incorrect, and every time that is raised we try to correct that, that the fact that the funding into the trust is comprised partly of stock that will be liquidated by the trustee --

THE COURT: That's why our simplified disclosure has to tell them that.

MS. DUMAS: Yes. Yes, sir.

THE COURT: Don't you agree?

MS. DUMAS: We are --

THE COURT: You agree? Okay.

MS. DUMAS: We are well aware of that.

THE COURT: Okay.

MS. DUMAS: And our, sort of, it's like whack-a-mole with the various items of misinformation that are out there.

I want to confirm Mr. Karotkin's statements a couple of minutes ago that both the TCC and the thirteen requisite tort claimant professionals, requisite fire claimant professionals to the TCC RSA, have been working extremely hard for the last month on the resolution trust agreement.

THE COURT: Okay.

MS. DUMAS: And the claims resolution procedures. They are not yet ready to be disclosed, but we anticipate that the disclosure statement will include information that will enable anyone receiving that together with the package to

understand this is how my claim will be addressed post-confirmation. That's on our minds. It's very important, as well as working with the debtor's on --

THE COURT: Plain language, right?

MS. DUMAS: In plain language.

THE COURT: Plain language.

MS. DUMAS: As plain as we can make it, how the noticing procedures will happen, how people will get their ballots, so we're very happy that now all the major constituents -- the public entities, several claimants -- the bondholders, the TCC -- are all now under RSAs, or presumably will be as soon as Your Honor addresses the bondholder RSA, but we see this as a path forward.

We concur with Mr. Karotkin's statements that the debtor appears to be hopefully moving toward confirmation of a plan in a time frame that meets the deadline imposed by AB 1054. We leave to others the question of compliance, but we are heartened on behalf of the victim class that they will be seeing the light at the end of the tunnel in this bankruptcy case by this summer and a trust formed with the trustee who can begin addressing claims promptly after confirmation.

THE COURT: Right. Well, again, going back to the basics that you and I know, that, like, again, this was an example in the first PG&E case, but it's in every case. The bankruptcy court still has to make sure there isn't some

violation of some other law, so somebody has to satisfy me that 1054 has been complied with, and if it's the CPUC or the governor's office or a stipulation, that does the trick. If not, then somebody needs to persuade me, and I'm sure you need to be satisfied so your clients, your constituents, those thousands of people, will know that there's not some fatal flaw that's going to kill this thing before they're being asked to vote on something.

MS. DUMAS: Yes, sir. I'm very pleased to report that the main constituents in the case are in regular communications, hopefully rowing in the same direction, and with respect to our oar, which is really getting accurate information out to the 70,000 plus claimants, we are pulling very hard on that oar constantly.

Unless there's any questions, that's --

THE COURT: No.

MS. DUMAS: -- really all I wanted to update the Court.

THE COURT: No. Thank you, Ms. Dumas.

MS. DUMAS: Thank you.

MR. PASCUZZI: Good afternoon, Your Honor.

THE COURT: Yes.

MR. PASCUZZI: Paul Pascuzzi for the California State agencies.

THE COURT: Good afternoon.

MR. PASCUZZI: Your Honor.

THE COURT: By the way, I see a number of people standing up. I'm going to break at 12:30 -- and I don't mean to cut you off -- at 1:30 I'm going to hear the Tubbs fire motion, which shouldn't take too long, and I will resume this hearing then. I'm sorry to make it inconvenient for some of you, but we just can't have these marathon sessions.

So go ahead.

MR. PASCUZZI: Thank you, Your Honor. I appreciate the Court raising the issues with the trust disclosures. I didn't hear a commitment that things would be filed in connection with the disclosure statement, but we filed our pleading reserving our right, so --

THE COURT: Well, you filed them some time ago.

MR. PASCUZZI: Yes.

THE COURT: But you -- was I right, though -- you had a laundry list of other issues that --

MR. PASCUZZI: Correct.

THE COURT: -- weren't trust related. They were Clean Water Act and the prior -- well, you even dug up bankruptcy PG&E 1.

MR. PASCUZZI: Correct.

THE COURT: And those are issues that hopefully you can take up directly with the debtor's representatives, but we have to deal with them --

MR. PASCUZZI: Right.

THE COURT: -- at some point in terms of scheduling.

MR. PASCUZZI: Yes. And we have done that, Your Honor.

The other thing I wanted to point out, Your Honor, is that the debtor's plan, and it always has, puts the California State Agency fire-related claims in the fire victim trust.

THE COURT: Right.

MR. PASCUZZI: And we do plan to object to that. I don't think it's anything special that you have to set any special scheduling, but we do plan to do that. We've said from the beginning our claims, our fire-related claims, are very different than the fire victims claims. We're talking about about 3.3 billion dollars of claims. A large portion of that is the statutory obligation to recover FEMA funds from the responsible party, PG&E, pursuant to the Stafford Act. There is a much smaller portion, well less than a billion, that is actual State agency funds.

So I just wanted, so there's no surprises, to raise that issue with Your Honor.

THE COURT: Well, what am I supposed to do about it?

MR. PASCUZZI: You're not supposed to do anything about it right now.

THE COURT: Yes.

MR. PASCUZZI: But there will be briefing in

connection with probably the disclosure statement on classification issues on this particular item.

THE COURT: Okay.

MR. PASCUZZI: Thank you, Your Honor.

THE COURT: All right. Well, I'll take a couple of minutes, so --

Yes. Okay.

MR. MCGILL: Your Honor, Matthew McGill for the ad hoc committee trade claims.

THE COURT: Trade claims. Okay.

MR. MCGILL: Do you want to hear this now, or should we address this this afternoon?

THE COURT: Well, I mean, what's the short answer? You heard that Mr. --

MR. MCGILL: The short answer is we --

THE COURT: Mr. Karotkin says he wants to make it a confirmation issue. I mean, I don't --

MR. MCGILL: And Your Honor, your order or your ruling on post-petition interests said the only reason you were withholding an order was because of the make whole dispute, and it was related -- the make whole dispute, we now have heard, has been resolved, so there's no reason for the Court to withhold an order on its previously issued ruling on December 30.

THE COURT: Well, remember, yes I could do that and

leave it to you to decide whether you convince somebody to take it as an interlocutory order. I have to decide whether it's the right thing to do to make it a final order. And by the way, some of you, I remember, on the inverse condemnation and in connection with -- in that one, at least, I went two ways. I said a 54(b) or direct appeal to the Court of Appeals. And even interlocutory orders can be the subject of recommendations for direct appeals. It's up to the Court of Appeals.

MR. MCGILL: Okay.

THE COURT: But I still have to decide, in my mind, that it merits it, and I'm not a hundred percent convinced that I would want to do that unless I'm convinced by you or others that I should do it now.

MR. MCGILL: Okay.

THE COURT: Because I don't want to get -- I'm not supposed to be sending appeals up to the --

MR. MCGILL: Right.

THE COURT: -- up to the --

MR. MCGILL: So let me take it in pieces, okay? So the first point I wanted to make was that you should go ahead now and issue an order that accompanies your December 30 ruling.

We do agree with Your Honor's previous suggestion that this should be certified under Rule 54(b) as final. It easily satisfies the Ninth Circuit's --

THE COURT: Okay. Mr. McGill, hold on. What I'm going to do is the debtor does not want that. You would like it. I just need to let it decide. Maybe I have further argument on it. I don't want to do it now.

MR. MCGILL: Okay.

THE COURT: Because to just sign the order doesn't do the trick.

MR. MCGILL: I understand that.

THE COURT: Okay?

MR. MCGILL: Right.

THE COURT: And there are consequences, as you know, to the 54(b) certification, so --

MR. MCGILL: Yes.

THE COURT: -- it cuts both ways. Okay.

So I'll take it as you want me to do what you said in your papers, and the debtor doesn't want me to do it, and I'll figure out whether I should give you an opportunity to brief it further, but I can't do it now.

MR. MCGILL: Okay.

THE COURT: Okay?

MR. MCGILL: So what's the next step, Your Honor?

THE COURT: Well, are you going to be around this afternoon?

MR. MCGILL: If you wish, I will be.

THE COURT: Well, you don't have to be.

MR. MCGILL: I'm sure my clients would want me to be.

THE COURT: You'd like to be heard further on the subject, right? So I'll tell you what. We have an important motion coming on the 4th. I don't know whether it's going to be contested or not, but I have more time on the 4th, and so I could take it up on the 4th, or I could take it up this afternoon and hear what Mr. Karotkin says, and if you guys want to submit it on papers or you just want to have just a little further argument, I'll do it either way. It's not a big issue. It's not a gating issue. But it's also something that I don't --

To me, when we're dealing with the huge question of make whole, had I been asked to make a ruling on it, or like the inverse condemnation when I made a ruling on it, those are much larger in scope than what is still a lot of money for your clients, but relatively speaking it's much different. So I'm not of the view that I'm doing anyone a favor by teeing it up as a final order at this point. Doing it as an interlocutory order is a no-brainer, because you don't have to do anything. No one has to do anything. So that's what I'd like you to --

MR. MCGILL: So just having consulted with the counsel for the other parties, we would like to be heard on the 4th.

THE COURT: Okay. Okay.

MR. MCGILL: If it suits, Your Honor.

THE COURT: Okay. We'll do it on the 4th. How's

that? Okay.

Ms. Winthrop, are you there?

MS. WINTHROP: I am, Your Honor.

THE COURT: Okay. You got a couple of minutes, and then I believe the other gentleman is Mr. Abrams, right?

MR. ABRAMS: Yes. Correct.

THE COURT: Okay. And then I'm going to cut off the --

MR. ABRAMS: Your Honor, I just need one minute.

THE COURT: Okay.

MR. ABRAMS: And I will be one minute.

THE COURT: Ms. Winthrop?

MS. WINTHROP: Thank you, Your Honor. Rebecca Winthrop, Norton Rose Fulbright, on behalf of the Adventist Health claimants and Feather Canyon independent living facility. We want to add our concerns to the FEMA and CAL FIRE's concerns on the lack of progress on the trust agreement and the trust procedures.

We have repeatedly raised this issue. We started out well. We thought we were going to be included in the loop as was represented to you. And as I said, we started out well, but we have been stonewalled for the last two weeks. This is an issue, we think, that should be set on its own briefing schedule. All of the procedures need to be fully disclosed and vetted separate from the disclosure statement. General

principles in the disclosure statement are not sufficient to address the problems that we see in the trust agreement, and they are serious problems.

THE COURT: Well, I guess what I'm -- okay. Serious problems. But what would we call it? What would this hearing be called?

MS. WINTHROP: A review on the adequacy of the trust agreement and related trust procedures.

THE COURT: Mr. Karotkin, you said you're going to have your plan to file later this week, and your target is a disclosure statement by the 7th. But when can you -- is there some way you can meet and confer further with Mr. Pascuzzi and Ms. Winthrop, and we can talk about it on the 4th? She's got a good point and so does he. I don't want -- we got to --

MR. KAROTKIN: Your Honor, to the extent they're talking about the trust procedures for the TCC's trust, I think that document is in the hands of Ms. Dumas.

THE COURT: Okay. Listen. I'm going to take this up at 2:30 today, and if necessary do it over to the 4th.

MS. WINTHROP: I will be here.

THE COURT: I've got to take my break.

Mr. Abrams, I saw you here. I noticed that you filed an amended and renewed objection to the prior RSAs and chose to put it on calendar today. You couldn't just put it on calendar on your own, but that is off calendar. So what is your request

today?

MR. ABRAMS: Yes. I'm sorry, Your Honor. I am trying to follow the procedures the best I can.

THE COURT: Well, it's simply off calendar. I mean, the point is it's off calendar. If you want to be heard and you want to take another shot at those two RSAs, you can file a proper motion. But you can't just, on the 28th, file something and set it on the hearing on the 29th at 1:30. And then I'm told by my clerk that you also wish to object to the new RSA, but you haven't said so.

MR. ABRAMS: Well, the new RSA is unchanged in the manner --

THE COURT: No, the new RSA hasn't even been filed until a couple of days ago.

MR. ABRAMS: It was filed on the same day that I filed my reconsideration.

THE COURT: Well, that was yesterday.

MR. ABRAMS: Correct, Your Honor.

THE COURT: Okay. I don't absorb all -- but I'm not going to hear that. You have a right to be heard on that on the 4th.

MR. ABRAMS: And that's all I'm here to do. I'm not here to make my argument. I just want to make sure that I do have the option to be able to be heard on the 4th.

THE COURT: What did my order say? It said objections

by the 3rd, and the hearing's on the 4th. So if you filed --

MR. ABRAMS: Oh. I didn't --

THE COURT: But you have --

MR. ABRAMS: Sorry.

THE COURT: I'm not aware that you filed an objection.

MR. ABRAMS: So yes.

THE COURT: This document is not an objection to the new RSA with the bondholders.

MR. ABRAMS: Okay. So that's as it was intended was that objection.

THE COURT: It's not what it says, sir.

MR. ABRAMS: Understood. So I will refile if what you're asking is for me to refile and put that --

THE COURT: I'm the one that is trying to give everybody a chance, but it's a squeeze. The RSA was filed yesterday, and the hearing, the deadline is next Monday, and the hearing is Tuesday.

MR. ABRAMS: And I understand. And with all the shortened time and everything else, I'm doing my best to keep up with the proceeding.

THE COURT: I didn't say you weren't. So am I.

MR. ABRAMS: It was filed a half hour before I filed my --

THE COURT: Mr. Abrams, stop. Stop. There's no deadline running on you. You have until noon on next Monday to

object to the current RSA, the new -- I'll call the new RSA.

MR. ABRAMS: Okay.

THE COURT: If you want me to revisit the ruling on the TCC and the subrogation RSAs, you need to set that as a separate motion.

MR. ABRAMS: Okay. I will refile that as a separate motion. I'm also --

THE COURT: But you can't just pick a date. We have procedures for that.

MR. ABRAMS: I understand.

THE COURT: I'm going to --

MR. ABRAMS: And again, I'm trying my best to follow the proceed --

THE COURT: Mr. Abrams, you've said that three times.

MR. ABRAMS: Well, I've tried to say it three times, and I --

THE COURT: I know. But I'm trying to tell you what the rules are. So I'm going to conclude this hearing now. I will pick up after the hearing at 1:30. At the end of that hearing, I'll listen to anybody that wants to still be heard on anything that I can't handle today. We've been out here for two-and-a-half hours.

MR. ABRAMS: Thank you, Your Honor. One other just scope question. So all of this shortened time, not just for myself but for other claimants to be able to object to the new

RSA, it seems like we're trying to squeeze this in too little time for objections, and so --

THE COURT: It is a tight -- it's a squeeze. I agree.

MR. ABRAMS: Yes. Okay.

THE COURT: I can't solve that problem. June 30th is a deadline that we're all trying to live with.

We'll resume at 1:30.

(Recess from 12:29 p.m., until 1:30 p.m.)

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

/s/ CLARA RUBIN

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Date: January 30, 2020

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